Chapter III

Role of Presiding Officer Under Anti Defection Law.

"There is something peculiarly exasperating about a broad affirmation of fundamental human rights unaccompanied by any machinery giving them legal effect. This is what Dicey had in mind: 'The Habeas Corpus Acts declare no principle, and define no rights but are for practical purposes worth a hundred Constitutional articles guaranteeing individual liberty. Had he been alive in 1948, he might have added 'or a thousand universal Declarations of Human Rights'.

The Constitution of India has created the two Houses of Parliament. The Lower House is known as Lok Sabha-House of the People and the Upper House is known as Rajya Sabha-Council of States. The Presiding Officer of the Lok Sabha is the Speaker. The Presiding Officer of the Rajya Sabha is the Chairman. In States the Legislative Assembly is Presided over by the Speaker and wherever the provision of Legislative Council is there, the same is Presided over by the Chairman.

I. Speaker

In all important conventional and ceremonies head of Lok Sabha is the Speaker. Within the walls of the House his authority is Supreme. This

De. Smith, S.A. Constitutional and Administrative Law, 2nd Edn. p.452
See Constitution of India.

The term "Speaker" appears to be somewhat paradoxical, since he is the only member of the House who does not take part in its debates except in the discharge of his duties as the Presiding Officer. But the original function of the Presiding Officers of the British House of Commons was "to sum up the case of both sides at the end of the debate and to 'speak' the views of the House in the contentions with the Crown." Donagh, Michale Mac, The Book of Parliament, London, 1897
authority is based on the Speaker's absolute and unvarying impartiality, the main features of his office, the law of its life. The obligation of impartiality appears in the constitutional provision which ordains that the Speaker is entitled to vote only in the case of equality of votes. Moreover, his impartiality within the House is secured by the fact that he remains above all considerations of party or political career, and to that effect, he may also resign from the party to which he belonged.

As a principal spokesman of the House, he represents its collective voice and is its sole representative to the outside world. When a message from the President of India to the House, whether with respect to a Bill pending in the Parliament or otherwise is to be received by the Speaker, who he reads it the same the House and gives necessary directions in regard to the procedure that is to be followed for the consideration of matters referred to in the message and in giving those directions, he can suspend or vary the rules to such extent as may be necessary. Similarly, the motion of thanks adopted by the House on the President's Address to the both Houses of Parliament assembled together, in a joint sitting is conveyed to the President by the Speaker.

The House commences its sitting when the Speaker, or any other member competent to preside over the sitting under the Constitution, or the Rules, is in the Chair.

P.115, also see Laundy Philip. The office of the Speaker in the Parliaments of the Commonwealth, London, PP.11-57.

4 Article 100(1), Constitution of India.

5 The first speaker who resign from the political party to which he belong was N. Sanjiva Reddy during 1967-69.

6 Article 86(2)

7 Rule 23

8 Rule 247

9 Rule 11
The Office of the Speaker is provided for in the Constitution\textsuperscript{10} and his salary and allowances are charged on the Consolidated Fund of India\textsuperscript{11}. The Speaker does not take any part in the deliberations of the House except in the discharge of his duties as the Presiding Officer.

It is customary for the Speaker to make appropriate references in the House on solemn occasions like anniversary of Universal Declaration of Human Rights by the U.N, Memory of the Myrtyres of Jallianwala Bagh, the May Day, anniversary of Atom Bombing of Hiroshima.

Since 1969, it is the practice that the Speaker makes references to the presence of foreign distinguished visitors, including Parliamentary Delegations in Special Boxes in the House When members cheer the visitors by thumping their desks\textsuperscript{12}.

The speaker enjoy fifth place in Rank and precedence alongwith the Chief Justice of India\textsuperscript{13}.

II. \textbf{House of Commons: Speaker}

The title of the presiding Officers in the two Houses of Parliament.

The Speaker of the House of Commons was originally so called because his function was to speak for the Commons in all the proceedings of the Parliament in which they were allowed or required to take part. The title

\begin{enumerate}
\item Article 93-96, Constitution of India.
\item Article 112(3)-(b), Constitution of India.
\item President's Secretariat Notification No.33 Pers/79 dated July 26,1979. In the table of precedence, the Speaker is preceded by President, Vice-President, Prime Minister, Governor of States within their respective States and former President.
\end{enumerate}
was borrowed from the Commons by the Lords, who did not become a
"House" until a considerable time after the House of Commons.14

The Speaker of the House of Commons is elected at the beginning
of each new Parliament by the members from among themselves, not on
their own initiative, but in obedience to the Queen's command15.

On the day appointed for the meeting of Parliament the members of
the House of Commons, who have assembled in their House, are
summoned to the House of Lords, where the Lord Chancellor, as mouth
piece of the commissioners for opening the parliament, informs the
members of both houses that as soon as they have taken the oath of
allegiance the Queen will declare the causes of her calling the Parliament.
he then directs the members of the House of Commons, in the Queen's
name, to repair to the place where they are to sit and there proceed to the
choice of some proper person to be their Speaker and present the person
whom they so choose in the House of Lords on the morrow at an hour
named for the royal approbation.

The members of the House of Commons then return to their House
and elect their speaker.

"The election is usually little more than a
formality, the member who was Speaker in
the preceding parliament, if he is a member
of the new one, being re-elected
unanimously. (There has been no instance
to the contrary since 1835, when the Whig
majority refused to re-elect Sir Charles
Manners Sutton, who had been Speaker
since 1817, on the ground that he had

15 The first recorded instance of the commons
being directed to choose a Speaker occurred
in 1384.
Assisted with others in the formation of the Tory administration on Lord Melbourne's dismissal by the king.\textsuperscript{16}

Arrangements are made before hand by the Government for the re-election of the Speaker to be proposed by one of their leading supporters and seconded by a member from the other side of the House. The proposal for the Speaker's re-election takes the form of a motion "That Mr. So and so do take the Chair of this House as Speaker". The proposer and seconder address their speeches to the Clerk of the House, who acts as Chairman during the election. He does not, however, call on members who rise to speak by name; he stands up and points with his finger at them, and then sits down.

If no other candidate is nominated and no member rises to oppose the motion\textsuperscript{17} the member whose re-election as Speaker is proposed, after expressing his sense of the honour proposed to be conferred on him, submits himself to the will of the House. His proposer and seconder then lead him to the chair. Before taking his seat, the Speaker elect (as he is called until approved by the Queen) thanks the House for the honour they have conferred on him. The mace, which up to this point has been under the Table of the House, is now placed on it, and after the leader of the House, the leader of the Opposition and the leaders of the other parties have congratulated the Speaker elect, the House, on the motion of the leader of the House adjourns, to the following day.

\textsuperscript{16} supra note 1, p.194.

\textsuperscript{17} In 1911, although no other candidate was nominated, a member spoke in opposition to the motion for re-electing Mr. Lowther Speaker. In 1698 and again in 1700, although only one candidate was nominated, the Tories on the first occasion and the Whigs on the second divided the House on the question that he "do take the chair as Speaker". Supra note 1, p.194.
Should two candidates be nominated as Speaker, both candidates address the House and after their comparative merits have been debated, the Clerk puts the question that:\textsuperscript{18}:

"the members who was first proposed do take the chair of the House as speaker. If this question is decided in the affirmative, the member is led to the chair in the manner already described. If, however, it is decided in the negative, the Clerk puts a similar question in respect of the other member who has been proposed as Speaker. If this question is agreed to the member is led to the chair by his proposers and seconder."

On the following day the Speaker elect takes the chair shortly before the time at which the Commons have been directed to present him for the royal approbation and awaits the summons to the House of Lords. When this is received by proceeds to the House of Lords, accompanied by a number of members. There he informs the Lords Commissioners that the choice of the Commons has fallen on him, and "submits himself with all humility to Her Majesty's gracious approbation", which is signified by the Lord Chancellor\textsuperscript{19}. The Speaker then "lays claim, by humble petition" to the Commons' ancient and undoubted rights and privileges, and when these have been confirmed returns to the House of Commons, and reports what has taken place\textsuperscript{20}.

\textsuperscript{18} This last happened in 1951 on the first election of Mr. Speaker Morrison.
\textsuperscript{19} Supra note 1; p. 194.
\textsuperscript{20} The only instance of the royal approbation being refused occurred in 1678, when Charles II refused to approve Sir Edward Seymour's election); also see Abraham L.A. & Hawtrey, S.C. 'A Parliamentary Dictionary', (1964) 193 at p. 195.
III. **Democracy and office of Speaker**

"Democracy is a part of the basic structure of our constitution, and rule of law and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority. It is only by a fair adjudication of such disputes relating to validity of elections and subsequent disqualifications of members that true reflection of the electoral mandate and governance by rule of law essential for democracy can be ensured."

Hon'ble Verma, S,J. has mentioned the provisions regarding disqualification under Article 103 and 192 and observed that:

"In the democratic pattern adopted in our Constitution, not only the resolution of election dispute is entrusted to a judicial tribunal, but even the decision on question as to disqualification of members under Article 103 and 192 is by the President/ Governor in accordance with the opinion of the Election Commission."...

Venkatachaliah, M.N, J as he then was who delivered the majority judgement in Kihoto Hollohan case observed: "The Office of the Speaker is held in the highest respect and esteem in Parliamentary traditions. The evolution of the Institution of Parliamentary democracy has as its pivot the institution of the Speaker. The speaker holds a high, important and ceremonious office. All questions of the well being of the House are matters of Speaker's concern. The speaker is said to be very embodiment of propriety and impartiality. He performs wide ranging functions including the performance of important functions of a judicial character."

Whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority. The Supreme Court has opined that

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1. Kihoto Hollohan V. Zachillhu (1992) Supple(2) SCC 651, 741 (Minority view)
2. ibid, p.741

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the provision does not incur the vice of unconstitutionality because the high Status and Importance of the office of the Speaker in a Parliamentary democracy cannot be ignored.

Paragraph 2 (1)(a) of the Tenth Schedule proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate.

The same yard stick is applied to a person who is elected as an independent candidate and wishes to join a political party after the election. Paragraph 2 (1)(b) of the Tenth Schedule deals with a slightly different situation i.e. a variant where dissent becomes defection. If a member while remaining a member of the Political party which had set him up as a candidate at the election, votes or abstains from voting contrary to "any direction" issued by the political party to which he belongs or by any person or authority authorised by it in this behalf he incurs the disqualification stipulated under Tenth Schedule.

IV. Speaker/Chairman and Tenth Schedule.

The Chairman of the Council of States or Legislative Council of State, or the Speaker of the House of the People or Legislative Assembly as the case may be has been adjudged as adjudicatory authority under para 6 of the Tenth Schedule.

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4 ibid 712 majority view: M.N.Venkatachaliah (as he then was for himself, and K.Jayachandra Reddy and S.C.Agarwal, JJ)
5 Paragraph 6 of the Tenth Schedule of the Constitution of India reads as under:
The powers and functions of the Presiding Officer of the House concerned are derived from our constitutional provisions from the rules of procedure framed under Article 118(1) of the Constitution and under Article 208 by House of the State Legislature as the case may be. These rules are framed for regulating the procedure and the conduct of the business of the house under the Constitutional provisions.

(6) "Decision on questions as to disqualification on ground of defection:

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

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

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

Article 122(1) of the Constitution lays down that:

(i) "the validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure".

Similar provision is laid down in respect of the State legislatures also. Another relevant provision in this regard is enshrined in article 118(1) which provides that,

"Each House of Parliament may make rules for regulating, subject to the Constitution, its procedure and the conduct of its business."

While the freedom of speech within the House is subject to the restrictions imposed by Articles 19 and 21 or by the relevant rules of the House, no action in a court of law lies for violation of any of the foregoing provisions of Article 194(2). The remedy against such utterances is in the hands of the Speaker who may prevent or to take action against the violation of these provisions. The Supreme Court has laid down that:-

"The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood or suspension of bias could not be ruled out. The question as to disqualification of a Member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of Law has in it firmly entrenched, natural justice, of which, rule against bias is a necessary concomitant...This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the authority to decide election

Mutatis Mutandis, similar provision is found in respect of State Legislatures in Article 208(1) of the Constitution supra note 6, p. 338.
disputes and questions as to disqualification of members under Articles 103, 192 and 329 and opting for an independent authority outside the House.

The Speaker being designated as the sole and final arbiter of disputes on disqualification of members of Lok Sabha and legislative assemblies was held by the minority to violate a basic feature of the Constitution. The minority differentiated the role of the Chairman of the Rajya Sabha, who is the Vice President of India, from that of the Speaker. But this differentiation would not save the tenth schedule as it became unworkable for the Lok Sabha and state legislative assemblies.

The Majority while reiterating judicial review as a basic feature of the Constitution and declaring para 7 of tenth schedule as unconstitutional, yet saved the rest of the tenth schedule by applying the doctrine of severability to the constitutional amendment. This represents high watermark of judicial statesmanship as the constitutional amendment was enacted to contain and eliminate the national malaise of defections in the functioning of the political process which was eating into the vitals of democracy. Hence, the apex court interpreting the Constitution establishes community policies in the broader sense.

The Supreme Court has laid down that proper forum for determining the legal dispute is court and observed:

"The proper forum under our constitution for determining a legal dispute is the Court which is by training and experience assisted by properly qualified advocates, fitted to perform that task. A provision which purports to exclude the jurisdiction of the Courts in certain matters and to deprive the aggrieved party of the normal remedy will be strictly construed, for it is a principle not to be whittled down that an aggrieved party will not, unless the jurisdiction of the Courts is by clear enactment or necessary implication barred, be denied his right to

Supra note 1, p. 754 (Minority view).

ibid.
seek recourse to the courts for determination of his rights"11.

The Supreme Court has further laid down that:

"the Court will avoid imputing to the legislature an intention to enact a provision which flouts notions of justice and norms of fair play, unless a contrary intention is manifest from words plain and unambiguous. The provision in a statute will be construed to defeat its manifest purpose and general values which animate its structure. In an avowedly democratic polity, statutory provisions ensuring the security of fundamental human rights including the right to property must, unless the mandate be precise and unqualified, be construed liberally so as to uphold the right. These rules apply to the interpretation of Constitutional and statutory provisions alike12.

Another important function of the Speaker is under the Anti Defection Law, Para 6(1) of the Tenth Schedule to the Constitution lays down that if any question arises as to whether a member of a House has become subject to disqualification under the Tenth Schedule, the question shall be referred for the decision of the Chairman, or as the case may be, the Speaker of such House and his decision shall be final. Further, para 6 (2) provides that as all

11 Infra
proceedings under sub para (1) of a paragraph 6 in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of Article 21213.

Regarding the impartiality and sense of justice which the Speaker is to maintain, Shri Mavalankar observed:-

"In parliamentary democracy, the office of the Speaker is held in very high esteem and respect. There are many reasons for this. Some of them are purely historical and some are inherent in the concept of parliamentary democracy and the powers and duties of the Speaker. Once a person is elected Speaker, he is expected to be above parties, above politics. In other words, he belongs to all the members or belong to none. He holds the scales of justice evenly irrespective of party or person, though no one expects that he will do absolute justice in all matters; because, as a human being he has his human drawbacks and shortcomings. However, everybody knows that he will intentionally do no injustice or show partiality. Such a person is naturally held in respect by all"14.

Pandit Jawahar Lal Nehru referring to the office of the Speaker said:

"......The Speaker represents the House. He represents the dignity of the House, the

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13 ibid, p.340
freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation's freedom and liberty. Therefore, it is right that, that should be honoured position, a free position and should be occupied always by men of outstanding ability and impartiality."\(^{15}\)

M.N. Kaul and Shakdhar referring to the office of the Speaker observed:

"The all important conventional and ceremonial head of Lok Sabha is the speaker. Within the walls of the House his authority is supreme. This authority is based on the Speaker's absolute and unvarying impartiality the main feature of his office, the law of its life. This obligation of impartiality appears in the Constitutional provision which ordains that the Speaker is entitled to vote only in the case of equality of votes. Moreover his impartiality within the House is secured by the fact that he remains above all consideration of party or political career, and to that effect he may also resign from the party to which he belonged\(^{16}\).

The Experts has thus opined that the Speaker has a Constitutional obligation of impartiality and has further explained that is the reason the Speaker is having right as casting vote when there is a tie.

Referring to the Speaker in the House of Commons, Erskine May has observed that:

"The Chief Characteristics attaching to the office of Speaker in the House of commons are authority and impartiality. As a symbol of his authority, he is accompanied by the Royal Mace which is borne before him when entering and leaving the Chamber and upon

\(^{15}\) Supra note 1, p. 713

State occasions by the Sergeant at arms attending the House of Commons, and is placed upon the table when he is in the Chair. In debate, all speeches are addressed to him and he calls upon Members to speak a choice which is not open to dispute. When he rises to preserve order or to give a ruling on a doubtful point he must always be heard in silence and no member may stand when the speaker is on his feet"17.

The Learned author further said that:-

"Reflections upon the character or actions of the Speaker may be punished as breaches of privilege. His action cannot be criticised incidentally in debate or upon any form of proceeding except a substantive motion. His authority in the Chair is fortified by many special powers which are referred to below. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised"18.

The Supreme Court has laid down that the Speakers/Chairmen while exercising the powers under Tenth Schedule of the Constitution exercises judicial function of the State which otherwise would be vested in the Courts and, therefore, in this capacity, he acts as 'Tribunal' amenable to the jurisdiction under Articles 136,226 and 227 of the Constitution19.

Now, let us examine, the Janta Dal case where 37 members of Parliament of Janta Dal (5) have filed a writ petition before the Delhi High Court questioning the order of the High Command of

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Janta Dal, which has expelled them from the party on the ground of their defection when this order was challenged before the Court by the petitioners, and similar proceeding were initiated against the 37 M.Ps., before the Speaker, Lok Sabha who was asked by the Janta Dal of Mr. V.P. Singh, Group, to give a verdict under anti Defection law, i.e., under the provisions of (disqualification under the ground of defection) Rules, 1985 in relation to the expelled M.Ps.

The Delhi High Court issued notice to the Speaker and directed the Speaker to maintain status quo in the matter concerning the alleged disqualification of 37 MPs of Janta Dal (s). The High Court clarified that the Speaker had full authority and jurisdiction in giving his ruling on the petitions filed against these members. The Government of the Day filed an affidavit admitting the power of the Court to deal with the matter. The then Prime Minister assured the Parliament that no stone will be left unturned which would affect the dignity and the position of the Speaker.

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20 Das, Hrudaya Ballav 'The Position and Role of the Speaker under the Constitution concerning the matter of Disqualification of a Member of the Parliament under Anti Defection law'. AIR 1991 Journal 119 & 120.

The Speaker Mr. Rabi Ray by his judgment on January 11, 1991 declared that 8 members are disqualified to continue as the members of the Lok Sabha any longer and so far as other 29 members are concerned, as there was no adequate proof that they were defectors, the petitions for disqualification against them were dismissed².

After the decision by ruling of the Speaker, there was again a dramatic development in the political scenario. Inspite of the fact that 8 member including 5 Ministers in the Chander Shekhar Government have been declared as disqualified members and they have been earlier expelled from the party by the Janta Dal High Command, which had been confirmed by the Speaker by his verdict, the Prime Minister did not accept the resignation of 5 Ministers and asked them to continue in the office by invoking the provisions of the Article 75(5) of the Constitution of India, on the ground that even if a person is not a member of the Lok Sabha, he can continue as a Minister for a period of six months.

The Tenth Schedule of the Constitution has vested Supreme power in the Speaker to decide the issue of disqualification of a Member and it is made abundantly clear that no Court of law can enter into the arena of the powers and jurisdiction of the Speaker in this regard³.

² Das Hrudaya Ballav, 'The Position and Role of the Speaker under the constitution concerning the matter of Disqualification of a member of the Parliament under Anti Defection Law AIR Journal 119,120.
³ ibid, p.121, also see Ballery, Uma Devi, 'Defections' and 'split' (1992) 36 JCPS 54
All the 37 MPs, have made out a case before Delhi high Court that by declaring a group of MPs. as "unattached", the Speaker had virtually decided on the validity of their expulsion which was not under his jurisdiction. The Speaker by his forthright and courageous decision, has not only protected the high tradition of parliamentary democracy, but his ruling halted the erosion of the anti defection act.

In Re Keshav Singh case. Special reference No.1 of 1964, the Supreme Court held that the Legislatures have undoubtedly plainly powers, but those powers are controlled by the basic concepts of the written constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three lists under the Seventh Schedule and beyond the lists, the legislature can not travel.

VI Chairman, Rajya Sabha and anti Defection law:

The Vice President of India is ex officio Chairman of the Council of States. Article 66 does not contemplate that a person who is elected Vice President of India shall either give up his political party or shall be deemed to have given up his political party. Although sound parliamentary conventions require that the Presiding officers of the Houses of Parliament

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4. ibid, p.121; also see Das, H.B., 'The Speaker and the judiciary' AIR 1991 Journal 147.
7. Article 64 Constitution of India
shall give up their political affiliations on assuming such offices, yet
defiance of many conventions have polluted our political life. Moreover,
when a specific provision has been incorporated in the constitution there
should be no room for ambiguity.

The question whether the Chairman of the Council of States has
become subject to disqualification under Tenth Schedule is to be decided
by a member of the Council of States who is elected by the Council for
this purpose. Now the question arises is that the Constitution of India in
its Article 67 provides that the Vice President shall hold office for a term
of five years. The procedure for his removal from the office has also been
laid down in Proviso (b) of Article 67 of the Constitution which reads as
follows:

"(b) a Vice President may be removed from his office by
a resolution of the Council of States passed by a
majority of all the then members of the Council and
agreed to by the House of the People, but no
resolution for the purpose of this clause shall be
moved unless at least fourteen days notice has been
given of the intention to move the resolution".

If the chairman of the Council of states, who is always the Vice
President of India, is disqualified under proviso to paragraph 6(1) of the

Joshi, K.C., 'Tenth Schedule of the
Constitution and the Chairman of the Council

Proviso to Paragraph 6(1) of the Tenth
Schedule to the Constitution which is
reproduced as under:
Provided that where the question
which has arisen is as to whether
the Chairman or the Speaker of a
House has become subject to such
disqualification, the question
shall be referred for the decision
of such member of the House as the
House may elect in this behalf and
his decision shall be final.
Tenth Schedule, there will be a conflict between Article 67 and paragraph 6 of the Tenth Schedule of the Constitution. The Vice President of India also holds an elected office and there is no bar of his belonging to a political party. His position as Presiding officer of the House is similar to the Presiding Officer of the House of the People. The voting powers of the chairman of the Council of states and the Speaker of the House of the People are also similar. But the chairman and the Speaker do not vote in the first instance. They have casting vote under article 100(i) of the Constitution of India. It may, therefore, be apposite if the word 'Chairman' is replaced by the word 'Deputy Chairman in the proviso of paragraph 6 of the Tenth Schedule of the Constitution. This will remove the possible conflict between Article 67 and the Tenth Schedule.

VII. Janta Dal Defections

On July 20, 1992, the Speaker Lok Sabha, received two letters dated July 19, 1992 from Shri S.R.Bommai, President, Janta Dal, intimating the expulsion of S/Shri Shivsharan Verma, Ram Awadh, Rajanth Sonker Shastri and Ram Nihore Rai, all members of Lok Sabha

Clause (I) Article 100 of the Constitution is reproduced hereinbelow:

"100(1) Voting in Houses, power of Houses to act notwithstanding and quorum.
(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. The Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes".

supra note 8.
from the Primary membership of the party for six years. The same day the Speaker received another communication from Shri V.P. Singh, Leader of J.D. Parliamentary Party conveying the party's decision about the expulsion of the said members. As per past practice and precedent, the Speaker allowed the four members to sit outside the Janata Dal Block in the Lok Sabha w.e.f. August 7, 1992\textsuperscript{12}.

Earlier the Speaker had taken a similar measure in respect of Shri Ajit Singh, M.P. who was expelled from the Janta Dal in December 1991 and S/shri Rashid Masood, Harpal Panwar and Satyapal Singh Yadav members of Lok Sabha, who were expelled from the Janta Dal in January, 1992.

On August 7, 1992, 20 members of Lok Sabha including the 8 aforesaid members who had been expelled from the Janata Dal and 12 other members belonging to the Janta Dal, met the Speaker and gave him an application bearing signatures of these 20 members and also 4 more signatures who however did not accompany the said 20 members\textsuperscript{13}.

\textsuperscript{12} Supra note 1, p.441; also see Noorani A.G., Lok Sabha Speaker on Janta Dal Defection' Mainstream August 29, 1992; p.25.

When the application was delivered to the Speaker and signed the letter again to affirm its contents. They requested the Speaker to recognise them and allocate separate seats in the Lok Sabha.

The gist of the order of the Speaker in the Janta Dal case decided on 1 June, 1993 is as follows:-

(1) It was held that the 20 members of Parliament who were signatories to the application given by them on 7.8.1992 and the request made by them in the said application was allowable and was allowed with respect to the sitting members at that point of time.

(2) It was held that Sarvashri Ram Sunder Dass, Govinda Chandra Munda, Gulam Mohammad Khan and Ram Badan had incurred disqualification for being members of Lok Sabha and had ceased to be members of Lok Sabha w.e.f. the date of the order i.e. June 1, 1993.

(3) The petitions for disqualification against the remaining 16 members were dismissed on the ground that when these members separated on 7.8.1992, they were sitting members.

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of Lok Sabha and were equal to one third members of Janta Dal Legislature party\textsuperscript{17}.

The Speaker, Shiv Raj V. Patil pointed out that "The Tenth Schedule of the Constitution of India had served to a great extent the purpose for which it has been brought into existence. It has some weak points and defects too. They are now thrown up and have become quite visible. They should not be allowed to continue in the body of the law"\textsuperscript{18}

The Speaker opined that the law should be made more comprehensive so as to provide for possible, situations which could crop up in interpreting and enforcing the law, such as matters pertaining to party activities outside the Legislature the question of who should decide cases relating to the anti defection law and the applicability of whip\textsuperscript{19}.

VIII \textbf{Expulsion and its affects:}

Quite regardless of his final order, Patil's doctrine deserves to be exposed as spurious. He was a member of the Rajiv Gandhi Government which brought forward the anti defection Law in January 1985. It is incredible that he has forgotten that originally, the Bill contained three

\textsuperscript{17} ibid, p.447; also see Jain, C.K. `Speaker's Decision in Janta Dal case (1993) 39 JPI 441; Decision of the Hon’ble Speaker, Lok Sabha Dated 1 June, 1993 under Tenth Schedule to the constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 In the Janata Dal Case, Lok Sabha Secretariat, New Delhi, June 1993.

\textsuperscript{18} supra note 1, p.446

\textsuperscript{19} supra note 15; also see Decision of the Hon'ble Speaker, Lok Sabha dated 1 June, 1993 under Tenth Schedule To the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 IN THE JANATA DAL CASE, Lok Sabha Secretariat, New Delhi, June 1993.
grounds on which a legislator can be dubbed as defector and unseated—voluntary renunciation of membership, defiance of the party whip and expulsion from the party. The first two figure in the law. The last was dropped20.

Clause 2 (1)(c) of the Constitution(52nd Amendment)Bill 1995 which was part of the draft bill is as follows:

"If he has been expelled from such political party in accordance with the procedure established by the constitution, rules or regulations of such political party".

Rajiv Gandhi was keen on this clause, so were the AIADMK and N.T. Rama Rao. But the Congress Parliamentary Party got the Government to drop a clause which would have reduced the legislators to bonsmen.

In 1987 Prime Minister, Rajiv Gandhi expelled V.P.Singh from the party the day after he had offered to resign. Expelled were Arun Nehru, Arif Mohammed Khan and Mufti Mohammed Sayeed. No so show notice was given. No hearing was accorded2.

The expulsion of a member of a political party is governed by the Common Law regulating all voluntary association, be they

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1 Constitution (52nd Amendment)Bill, 1985 (as introduced)

clubs or political parties. The expellee has a right to challenge it in courts. Ajit Singh did just that. The Delhi High Court rejected his plea.

The expelled member does not lose his membership of the House as is clear from the fact that clause 2 (1)(c) of the Bill (as introduced) was dropped. But unless the expulsion is set aside by the courts, the expellee very much loses his membership of the party. He is no longer amenable to its whip. He cannot be counted among the members of the political party.

Since the clause 2 (i)(c) was dropped, the Speaker cannot judge the validity of an expulsion. That decision lies as before with the Courts and the Courts alone. The Speaker is appointed the adjudicatory authority only under the anti defection law and he is concerned with the two grounds alone violation of the whip and renunciation of membership.

Once the Speaker is faced with expulsions which have not been set aside by courts the aggrieved person is entitled if he succeeds to restoration of membership as well as damages—the Speaker has no option but to regard the member as "unattached" he can neither be unseated by the law nor be reckoned as a member of his former party. If it issues a whip to them thereafter, he is entitled to ignore it without losing his seat. The Speaker will not regard it as a case of violation of the whip and unseat him.

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4 ibid
outside the Parliament. In party matters relating to the Parliamentarians outside the Parliament, jurisdiction is available to the forums presided over by other authorities and not by the Speaker\(^8\).

The exercise of discretion by the Court even where the application is delayed, is to be governed by the objective of promoting public interest and good administration, and on that basis it can not be said that discretion would not be exercised in favour of interference where it is necessary to prevent continuance of usurpation of public office or perpetuations of an illegality\(^9\).

**X Power of Review and Anti Defection Law:**

Whereas an order of review was passed by the Speaker of the State Legislative Assembly reviewing the earlier order of disqualification of the Chief Minister and two other Ministers on the ground of defection, a writ petition filed by the member of Assembly questioning the power of the Speaker to review the order of disqualification made under Tenth Schedule filed ten months after the date of impugned order was not liable to be dismissed merely on ground of latches, when the alleged usurpation of the public offices, including that of the Chief Minister\(^10\).

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\(^{9}\) Kashi Nath G. Jalmi v. The Speaker AIR 1993 SC 1873, 1883.

\(^{10}\) ibid, p. 1883
The Hon'ble Supreme Court has laid down that:

"It is implicit that at least a limited power of review inheres in the Speaker to correct palpable errors outside the scope of the limited judicial review available against the order of disqualification made by the Speaker under the Tenth Schedule\(^{11}\).

**XI Principles of natural justice**

Principles of natural justice have an important place in Modern Administrative Law. They have been defined to mean "fair play in action\(^{12}\). They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and Justice which is not the preserve of any particular race or country but is shared in common by all men\(^{13}\).

An order of an authority exercising judicial or quasi judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and therefore, suffers from a jurisdictional error. That is the reason why inspite of the finality imparted to the decision of the Speakers/chairman by paragraph 6 (1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non compliance with the Rules of natural justice. But while applying the principles of natural justice, it must be borne in

\(^{11}\) ibid, p,1877; also see Kihoto Hollohan V.Zachillhu (1992) Supple (2) SCC 651.


mind that they are not immutable but flexible and they are not cast in a rigid mould and they cannot be put in legal strait jacket. Whether the requirement of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.\footnote{Ravi S. Naik Vs. Union of India (1994) Supple. (2) SCC 641, 643.}

\section*{XII Role of Deputy Speaker and Anti Defection Law}

The office of the Deputy Speaker in India (known as Deputy President till 1947) is as old as the Central Legislature itself. A Deputy Speaker, as in the case of Speaker, ceased to hold office if he ceased to be member of the Assembly. He could resign his office by writing under his hand addressed to the Governor General and could be removed by a vote of the Assembly with the concurrence of the Governor General.\footnote{S.63C.(3) as set out in the Ninth Schedule to the Government of India Act, 1935. Second Session Commenced on January 28, 1948.}

Sachidanand Sinha was the first Deputy Speaker of the Central Legislative Assembly, who was elected on February 3, 1921. The constituent Assembly (Legislative) Rules, 1947 did not provide for the office of the Deputy Speaker, but in 1948 during the second session of the Constituent Assembly (Legislative) need was felt for having a Deputy Speaker to preside over the sittings of the Assembly in the absence of the Speaker. After relevant amendment in the Rules, the office of Deputy Speaker was revived.
Like the Speaker, the Deputy Speaker of the Constituent Assembly (Legislative) continued under Article 379 as Deputy Speaker of Provisional Parliament on the enforcement of the constitution.

The Deputy Speaker is elected in accordance with the provisions of Article 93 of the Constitution. The procedure for choosing the Deputy Speaker is the same as for the Speaker except that the date for the election of Deputy Speaker is fixed by the Speaker\(^\text{17}\).

The first election to the office of Deputy Speaker under the Constitution and the present Rule was held on May 30, 1952.

The Deputy Speaker holds office from the date of his election till the dissolution of Lok Sabha. He is eligible for re-election. During the absence of Speaker from any joint sitting of both the Houses of Parliament, the Deputy Speaker presides over and exercises the powers of the Speaker at such a sitting as is the case when he is presiding over the deliberations of the House\(^\text{18}\).

The Deputy Speaker has a right to take part in the politics of the party to which he belongs, although in practice as far as possible, he keeps aloof from active participation and controversial issues in order to maintain his position of impartiality in the House\(^\text{19}\).

\(^\text{17}\) Rule 8(1); also see Kaul, M.N. 'Position and Functions of the Deputy Speaker' (1947) 3 JPl, 2.

\(^\text{18}\) Rule 5, The Houses of Parliament (Joint Sittings and Communications), Rules.

Whether the Deputy Speaker is empowered to adjudicate the issues of Defections is the question.

Para 5 (1) of the Tenth Schedule has expressly provided that if a question is in relation to the disqualification of a member of the House, the Speaker or the Chairman, as the case may be is empowered to decide the question.

Since para 5 of the Tenth Schedule exempted the specified persons from disqualification if he happens to have resigned in


"5. Exemption: Notwithstanding anything contained in this schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a state, shall not be disqualified under this schedule:-
(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party or
view of his/her election as such Chairman or Speaker, as the case may be;

The provisions of para 5 which exempt the Deputy Speaker as well as Speaker, means that in the event of vacancy in the office of Speaker, the Deputy Speaker shall have all the rights and powers of Speaker.

Article 95 of the Constitution which provides that the Deputy Speaker shall perform the duties of the office of Speaker.

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

95. Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as speaker.

(1) while the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or if the office of the Deputy Speaker is also vacant by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of Speaker from any sitting of the House of the People, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker."
A similar provision is incorporated in Article 180 of the Constitution in relation to the State Legislature. If we perused the above provision, the Deputy Speaker has been equated with the Speaker in the absence of the Speaker.

Article 65 of the Constitution authorises the Vice President to act as President in the event of casual vacancy.

65. The Vice President to act as President or to discharge his functions during casual Vacancies in the office, or during the absence, of President:

(1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal or otherwise, the Vice President shall act as President until the date on which a new President elected in accordance with the provisions of this chapter to fill such a vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice President shall, during and in respect of, the period while he is so acting, or discharging the functions of, President have all the powers and immunities of the President and be entitled to such emoluments, allowances and privileges as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments, allowances and privileges as
The provisions of Article 65 is reproduced hereinbelow:

The normal function of the Vice President is to Preside over the sittings of the House of Council of States. But whenever there occurs any vacancy in the office of the President by reason of death, resignation, removal or otherwise, the Vice President shall act as President until new President is elected. The Vice President may be called upon to discharge the functions of the President when he owing to absence, illness or any other cause, is unable to perform the functions of his office. The Vice President when he acts as President or discharges his functions, shall be entitled to such emoluments, allowances and privileges as may be determined by Parliament.

The Scheme of Indian constitution is, when the office of President is vacant due to illness, or any other cause the Vice President of India shall discharge his functions. Article 91 of the Constitution empowered the Deputy Chairman of Council of States for performing the functions of the Chairman.

Keeping in view the above scheme and the provisions of Article 91, 95, 180 and 184 of the Constitution, the holder of the office of Deputy Speaker or Vice Chairman, as the case may be, has been constitutionally empowered to act as Speaker or chairman, as the case may be.

Paragraph 6(1) read with paragraph 5 of the Tenth Schedule to the Constitution, it is clear that the provision of para 5 has clearly equated the two. In my considered opinion, in view of the above provisions, in the

are specified in the Second Schedule ".
event of vacancy or absence due to illness or otherwise, the Deputy Speaker is competent to adjudicate upon the provisions of the Tenth Schedule.

Coming to the Gujarat Controversy, on the expulsion of Shanker Sinh Vaghela from the Bhartiya Janta Party, 46 members of the Gujarat legislative Assembly formed a group known as Maha Guajrat Janta Party. The memorandum was submitted to the Speaker who was seriously ill (later died) could not take action required under Tenth Schedule. The 46 members met Governor who asked the Speaker to verify the signature. On verification, the signature of the members were found to be correct.

In the Assembly session on 3rd September 1996 when the Deputy Speaker was acting as Speaker (as the Speaker was seriously ill) the Deputy Speaker recognised the group as a split group and the House was adjourned sine die.

On the request of the Chief Minister, that he be provided with another opportunity, the Governor of Gujarat asked the Chief Minister to prove his majority in the House by September 13, 1996. In the meantime the BJP has given notice for the removal of the Deputy Speaker and by September 13, 1996, the Constitutional requirement of 14 days notice period is not complete. The Chief Minister scheduled the House on September 17, 1996. It is a fact of public knowledge that the House was to make obituary references to the late Speaker and others and then adjourned. The confidence motion was to be taken up only the next day.

Whether the Constitution and the Parliamentary laws allow the Chief Minister to appoint a pro tem Speaker. In my considered opinion, certainly not.
Now question arises when a group of legislators which is claiming to have engineered split in their original political party, whether the Speaker if on verification came to know that the said group is genuine and satisfies the constitutional requirements of split under para 3 of the Tenth Schedule? Whether the Speaker has discretion to recognise the split or not?

If the Constitutional requirement is satisfied, the Speaker has to recognise the splinter group as split from the original party and he has no discretion vested in him to recognise or not to recognise.

The recent Gujarat example is contrary to the spirit of the Tenth Schedule. As in that case, the Speaker has verified the signature of the members of the split group from the original Political party if he is satisfied that the requirement of para 3 is complied with, he has to recognise the group and he has no discretion in the matter.

Another latest example of Arunachal Pradesh may be remembered where the Congress Legislature party was left by the wholesome majority of members and a regional party in the name of Arunachal Congress was floated by the Chief Minister. The Speaker in such a case has rightly recognised the split in the party as the 41/58 Two third majority of the whole House has joined a newly floated regional party.