Chapter IV

Splits, mergers and Anti Defection Law

"The Speaker represents the House. He represents the dignity of the House, the 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 an honoured position, a free position and should be occupied always by men of outstanding ability and impartiality"1A.

-JAWAHAR LAL NEHRU

The fundamental object of the Anti-Defection law is to finish the malady of unprincipled defection of legislators at the same time, providing scope for realignment of forces by way of merger and split of political parties on ideological moorings. Alignments can be advanced not only for deserting parties but also for not deserting. But, all defections cannot be termed as unprincipled.

The phenomenon of defection was not unknown to older democracies. In India too a number of stalwarts1 had changed their political allegiance at one time or the other in the past, purely influenced by the Prime Minister of India—on March 8, 1958. After the commencement of the Anti Defection law in 1985, V.P.Singh was expelled when he sought to resign as the Union Minister. His group came to power in 1989 Ninth Lok Sabha and he take over as Prime Minister of India. The Ruling Janta Dal was splitted by Chander Shekhar and one faction was led by V.P.Singh in the Parliament and S.R.Bommai was Political party President; the other faction led by Chander Shakhar who became Prime Minister by way of split and Devi Lal was party President in 1990.
by honest differences with the leadership of the party. The emerging political situations in India at the moment is, however, alarming.

The question whether para 3 of the Tenth Schedule is capable of admitting two interpretations is a moot point for consideration, if it is read with contemporaneous provisions of the Tenth Schedule. Clause (b) of paragraph 1 interprets 'Legislature party in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or, as the case may be, paragraph 4 as the group consisting of all the members of that house for the time being belonging to that political party in accordance with the said provisions. Clause (c) of the said paragraph interprets 'original political party' in relation to member of a House as the political party to which he belongs for the purpose of sub-paragraph (1) of paragraph 2. Explanation (a) in sub-paragraph (1) of para 2 says that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member.

Original political party" and 'Legislature Party" at the commencement of a particular Lok Sabha/Assembly in the first generation is the political party which set up the member for election as such member. In the first generation the 'Original political party' refers only to the 'political party' which set up the member for election. The Anti-Defection law makes clear distinction between the 'original political party' which functions outside the House and 'Legislature Party' in the House.

The famous speech of the Electors of Bristol, 1774, where Edmund Burke reportedly said:-

"It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved

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See Annexure B: Constitution (Fifty Second Amendment) Act, 1985.
communication, with his constituents. Their wishes ought to have great weight with him, their opinion, high respect; their business, unremitted attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions to theirs- and above all, ever, and in all cases to prefer their interest to his own. But his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living.... Your representative owes you, not his industry only, but his judgement; and he betrays instead of serving you if he sacrifices it to your opinion.

I. Political Party and Members of the Parliament

Constitutionally recognising, for the first time, the identity of a member of Parliament as a member of political party, the Constitution (52nd Amendment) Act which is known as Anti Defection Act lays down that "

"a member of a House belonging to any political party shall be disqualified for being a member of the House - (a) 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 authorised by it in this behalf, without obtaining, in either case the prior permission of such political party, person or authority within fifteen days from the date of such voting or abstention".

The Act also lays down that,

"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".

and the Act further laydown:

"A nominated member of a House shall be disqualified for being a member of the

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4 Paragraph 2(1) of the Tenth Schedule to the Constitution of India.
5 See Paragraph 2(2) of the Tenth Schedule.
House if he joins any political party after the expiry of six months from the date on which he takes his seat

Disqualification on ground of defection would not, however, apply in cases where:

"a member of a House makes a claim that he and any other member of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party".

In cases where there is a split in a Legislature Party of the original political party. After the split the members who have splitted be deemed to be members of such party which is for the purposes of paragraph 2 of the Tenth Schedule:

"original political party merges with another political party and he claims that he and any other members of his original Political party -(a) have become members of such other political party, or as the case may be, of a new political party formed by such merger; or (b) have not accepted the merger and opted to function as a separate group... the merger of the original political party 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".

Every member who takes his seat in the House after the commencement of the Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985 (hereinafter may be referred to as Disqualification Rules, 1985), made under paragraph 8 of the Tenth Schedule must deposit his election certificate issued by the Election Commission under the Representation of People Act, 1951 with the Secretary- General/Secretary of the House concerned before making and subscribing on oath or affirmation under article 99 or 188 in accordance with paragraph 2(3) of the Tenth Schedule

See Paragraph 3, of the Tenth Schedule

Paragraph 4 of the Tenth Schedule
with rule 4(2) of the said rules. On the basis of the return certificates, the group of members elected on a party Label automatically constitutes the Legislature Wing of such party upon the constitution of the House. No member has the option to join any other political party at this juncture. The Tenth Schedule has its operation in relation to an elected member or a nominated member or a nominated member belonging to a political party from the date of his or her election or publication of nomination to the House in the Gazette.

The Tenth Schedule provides for two kinds of disqualifications for being a member of the House: (i) voluntarily giving up the membership of political party and (ii) voting or abstaining from voting contrary to the direction of the party which has set up the member in the election. The political party referred to in para 2(1) of the Tenth Schedule and the original political party referred to paras 3 and 4 of the Tenth Schedule is one and the same in the first generation.

Para 3 of the Tenth Schedule speaks of a split in original political party. In the first generation, it is none other than the party which has set up the member concerned for election within the meaning of Clause (C) of para 1 read with explanation (a) and (b)(i) in sub-para (1) of para 2 of the Tenth Schedule. The Tenth Schedule nowhere speaks of split in the Legislature Party. Paragraph 3 says that the Legislature Party which eventually comes in existence must be an off-shot of split in original political party outside the House and such group of legislature party shall command a strength of not less than 1/3rd of the members of the Legislature Party as it constituted originally on the basis of election returns filed by members under rule 4(2) of the Disqualification Rules 1985. Clause (b) of Para 3 says that from the time of split such a faction namely the breakaway group from the original political party outside the House shall be deemed to be the political party to which he belongs for purposes
of para 2(1) and it shall be deemed to be his original political party for purposes of the said paragraph.

It means, in the event of any further split in terms of para 3, there must be split in the breakaway faction of the original political party. It is argued in some quarters that there is a need to define the political party and to lay down conditions of its recognition for purposes of Anti-Defection law in as much as paragraph 3 of the Tenth Schedule which says to the effect that the breakaway faction following the split would be deemed to be his political party for purposes of para 2(1). In the light of the above, there is no need for such a definition. The breakaway faction of the original political party is the political party to which the member belong within the meaning of Clause (b) of para 3. On the basis of rule (2) of the Disqualification Rules, 1985, the members who are elected on a party label shall constitute the legislature Party in the House and hence there is neither need nor any scope for recognising the party.

II. Recognition of Party

Prior to the enactment of the Constitution (52nd Amendment) Act, 1985 the Speaker/Chairman of the House has to take into consideration the following principles/features of a political party:

(i) An association of members who proposes to form a Parliamentary Party-
   (a) Shall have announced at the time of the general elections a distinct ideology and performance of parliamentary work on which they have been returned to the House;
   (b) shall have an organisation both inside and outside the House; and
   (c) shall have at least a strength equal to the quorum fixed to constitute a sitting of the
If any party fails to command the required minimum strength, i.e., one-tenth of the total membership and satisfies the other two conditions, it is regarded as a parliamentary group provided its membership is at least thirty. Thus, according to the present enactment or according to the direction of the Speaker, Lok Sabha, the Speaker is bound to inquire whether the Legislature Party has an organisation outside the House with an ideology and programme of work announced at the time of general elections either, for recognition or for split. However, with the enactment of Anti-Defection law, direction 121 has no force in the light of rule 4(2) of the Disqualification rules, 1985 in regard to recognition of parties. But the spirit of the direction is incorporated in paras 3 and 4 of the Tenth Schedule for purposes of split and merger.

III. **Any direction of the Party and the Tenth Schedule**

Securing the hold of political parties on its members in the Parliament seems to be so predominant a consideration behind the Judgement in Kihoto Hollahan's case\(^9\) that though they approved the conclusion reached by the minority in Prakash Singh Badal's case\(^11\) that the words "any direction" occurring in paragraph 2(1)(b) of Tenth Schedule were were of limited meaning, they were not prepared to commend the reasoning given for arriving such conclusion. The minority in Prakash Singh Badal's case\(^12\), held that

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10 Kihoto Hollohan V.Zachillhu (1992) Supple(2) SCC 651
11 Prakash Singh Badal V.Union of India AIR 1987 P&H 263
12 ibid.
the words 'any direction' were to be narrowly construed because and observed,

"If the expression 'any direction' (occurring in paragraph 2(1)(b) is to be literally construed then it would make the people's representative a wholly political party's representative, which decidedly he is not. The Member would virtually lose his identity and would become a rubber stamp in the hands of his political party. Such interpretation of this provision would cost it its constitutionality, for in that sense, it would become destructive of democracy/parliamentary democracy, which is the basic features of the Constitution."13.

According to the majority in Kihoto Hollohan's case14, the words 'any direction' were required to be read narrowly not to "promote its constitutionality" but because "such a construction is a harmonious construction in the context,". The majority held,

"The disqualification imposed by Paragraph 2(1)(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(1)(b) is confined in its scope by keeping in view the object underlying the amendment 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 is incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of the Government is 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 on a matter which was major policy or programme on which the political party to which the member belongs went to the polls".15

The Supreme Court further observed that:

13 ibid, p.313
14 Supra note 10
15 ibid, p.716
"For this purpose the direction given by the political party to which the member belongs went to the polls. For the purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b) would have to be limited to a vote on motion of confidence or no confidence in the Government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate".

(IV) **No.Confidence Motion**

The views expressed by the minority in the Full bench decision of Punjab and Haryana High Court in *Prakash Singh Badals case* seem to be a more convincing explanation for the inclusion of the paragraph 2 of the Tenth Schedule in Constitution:

"..... the purpose of enacting paragraph 2 would be no other than to ensure stability of the democratic system, which in the context of Cabinet/Parliamentary form of Government on the one hand means that a political party or a coalition of political parties which has been voted to power, is entitled to govern till the Next election, and on the other, that opposition has a right to ensure the functioning of the Government and even overthrow it by voting it out of power if it had lost the confidence of the people, then voting or abstaining from voting by a member contrary to any directions issued by his party would by necessary implications which envisage voting or abstaining from voting in regard to a motion or proposal, which if failed, as a result of lack of requisite support in the House, would result in voting the Government out of power, which consequence necessarily follows due to well established constitutional convention only when either a motion of no confidence is

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16 ibid, p.716.
passed by the House or it approves a cut motion in budgetary grant"18.

The High Court of Punjab and Haryana further observed:

"Former because of the implication of Article 75(3) of the Constitution and latter because no Government can function without money and when Parliament declines to sanction money, then it amounts to an expression of lack of confidence in the Government. When so interpreted the clause (b) of sub-paragraph (1) of paragraph (2) would leave the members free to vote according to their views in the House in regard to any other matter that come up before it"19.

V. Split in Legislature Party

Another question for the consideration is when the Chairman/Speaker of the House is expected to inquire into the split. The only occasion afforded for the Speaker/Chairman under the Tenth Schedule is to cause such inquiry when he receives a proper petition under the rules seeking the disqualification of a member. Till such time, the Speaker has no authority under the Tenth Schedule to go into the question of split20.

In such an eventuality, if member whose disqualification as a member of the House is sought, claims that he and any other member/members of his Legislature Party constitutes a group representing a faction which has arisen as a result of split in his original political party or such group consists of not less than 1/3rd of the strength of the Legislature party, then the Speaker causes an inquiry. In such an inquiry, he is bound to ascertain whether there was a split in the original political party of the member on whose Symbol, he was elected.

18. ibid, p.314
19. ibid
20. See paragraph 3 of the Tenth Schedule
It is not that a mere 1/3rd of the members of a particular Legislature party can go to the Speaker and announce their intention to break away from their political party. The disqualification mentioned in the Tenth Schedule is for voluntarily giving up the membership of the political party on whose symbol, he was elected. The Speaker cannot save the member from disqualification without inquiring, in the first instance, whether there is a split in the party outside the House by merely confining himself to arithmetics of Legislature Party membership.

The function of the Speaker under the Law is to ascertain the numbers. The inquiry contemplated under the Tenth Schedule or the rules made thereunder, also takes into its fold the split in the party outside the House. The Speakers, however, thought in their wisdom that they were not concerned with what has been happening outside the House. If that be the case they have no authority whatsoever to take cognizance of the expulsion of members from the parties which was not contemplated by the Schedule and declare the expelled members as unattached. The Speakers of Andhra Pradesh and Kerala legislative Assemblies took cognizance of acts of certain members outside the House and declared them as disqualified to be the members of the House,

(V) **Unattached Member and his Status**

The Supreme Court has laid down that:-

"In view of the Explanation to para 2(i) of the Tenth Schedule even if a member is expelled from his political party, for the purposes of the Tenth Schedule, he will not cease to be a member of the political party which had set him up as a candidate for the
election. He will continue to belong to that political party even if he is treated as unattached".

The Supreme Court further laid down that:-

"The act of voluntarily giving up of the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, join another (new party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member.".

He must be taken to have acquired the membership of another political party to which he belong or must be deemed to have belonged under the Explanation to para 2(1) of the Tenth Schedule. of course, courts would insists on evidence which is positive, reliable and unequivocal.

Labelling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. The classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House,

"(1) one who has been elected on his being set up by a political party as a candidate for election as such member;(2) one who has been elected as a member otherwise than as a candidate set up by any political party - Usually referred to as an 'independent'

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1 G.Vishwanathan V. The Speaker, Tamil Nadu Legislative Assembly (1996) 2SCC 353, 361.
2 ibid.; also see Ravi S.Naik V. Union of India (1994) Supple (2) SCC 641.
3 ibid, p.363; Also see Ravi S.Naik V.Union of India (1994) Supple (2) SCC 641; Kashi Nath G.Jalmi V. The Speaker (1993) 2 SCC 703; Dr. Luis Proto Barbosa V. Union of India (1992) Supple (2) SCC 644; Bhajaman Bobera V. Speaker, Orissa Legislative Assembly AIR 1990 Orissa 18.
The Categories mentioned are exhaustive. It is impossible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise.

He voluntarily gives up his membership of the political party and incurs the disqualification. Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the Explanation to para 2(1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is concerned.

VII Dissent, Defection and Split

The real foundation of parliamentary democracy lies in the freedom of speech and expression and the right to form association. These are fundamental Rights under the Constitution of India. Political parties, which are nerve centres of democracy are born out of these freedom and are manifestation of collective enjoyment of these rights for common objects set up by them. Disagreement with the ideals of a political party, or dissent with the manager thereof, may persuade a member of the party to leave it or join another political party. His freedom to do so is absolute, though he may suffer certain disqualification, if he happens to be a

\[\text{\textsuperscript{4}}\text{ibid p.362; also see Decision of the Hon'ble Speaker, Lok Sabha Dated 1 June 1993 under Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 in the Janta Dal Case, Lok Sabha Secretariat, New Delhi, June 1993 p.21.}\]
member of a Legislature but for the Constitutional restraints by the Tenth Schedule of the Constitution which is commonly called as 'Anti Defection Law'.

The politics of defections and coalitions that followed the fourth general election led to a fundamental change in the contours of the political power structure at the State level. Though significant, the impact of the change was relatively limited in as much as there were no large scale defections at the Union level.

While discussing the measure, the Lok Sabha observed:

"If people vote against the party whip and if they happen to be 1/3rd of that party's legislature strength, OR above and if they happen to split outside the House, then irrespective of the fact whether there is a national split or a state split, the splitters will remain there and they will not be disqualified. If they disobey the whip, go against the political party on whose sponsorship they have got elected, they will be disqualified if they are small in number. But they will be able to do so with impunity if they are large in number. Now, of course, there is a saving clause here that the split of 1/3rd shall also arise because of a split outside the House".

The Supreme Court has examined as to whether para 1 (b) can be read in isolation:

"Para 1(b) of the Tenth Schedule cannot be read in isolation. It should be read along with para 2, 3 and 4. Para 1(b) in referring to the Legislature party in relation to a member of a House belonging to any political party, refers to the provisions of paras 2,3 and 4 as the case may be, to mean the group


Per Datta, Amal see (1985) LSD, January 30, 1985, p.78
consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paras 2, 3 and 4, as the case may be, Para 2(1) read with the Explanation clearly points out that an elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member[7].

The Court further observed:-

"This is so notwithstanding that he was thrown out or expelled from that party. That is a matter between the member and his party and has nothing to do so far as deeming clause in the Tenth Schedule is concerned. The action of a political party qua its members has no significance and cannot impinge on the fiction of law under the Tenth Schedule"[8].

In a democracy we have become mature as far as the voters are concerned, but the political parties will require some maturity. Otherwise this Legislation was not necessary. In a democracy, since the programmes of the parties are published, disciplinary action is taken against candidates going against the party.

The Lok Sabha has examined the positions of the smaller parties and legislature party position:-

"It is mentioned that it is considered as defection but it will be considered as a split if more than one-third members decide to cross over the other side. But what about parties which are in a very small number in the House? What about Parties which are in a microscopic minority either in the Lok Sabha or in the Assembly? If there are only two members or say if there are 4 members in a party and 2 defect or one defects how do you calculate the one third"[9].

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[7] supra note 1, p.362
[9] supra, note 6,p.83
It is not a question of toppling, it is a question of disciplining the parties. In a democracy if there are only 4 or 5 major parties, the voters can have a good choice. But unfortunately the parties are splitting whether they are in power or not in power. It is understandable if the party splits if it is in power, but they are splitting in the opposition also.10

Shri B.K. Gadhvi11 while participating in the discussion on Constitution (52nd Amendment) Bill observed;

"As far as split is concerned, it has been contemplated in the Bill that if one-third of the people want to go away from the party in the name of a split, then they shall not be disqualified. I am surprised to see that if one member commit a theft, it is an offence, but if anumber of members together commit a theft, it is not an offence."12

Split in a national party itself cannot be in the nature of a guillotine that abruptly falls and in a moment divides the party members all over the country into two members are thinking human beings who need some time to decide which way to go. There is no mention in Para 3 of duration within which a faction must make a claim that they constitute a group13.

There is no concept in Para 3 or elsewhere in the Tenth Schedule of a 'split in the legislature party as such. Split in Para 3 refers to a split in the original political party only. What happens in the Legislature party is only the rise of groups- representing the factions resulting from the split outside.14

VIII. Position in Jammu and Kashmir

10 ibid, (per Vijay N.Patil)
11 ibid, p.89
12 ibid
14 ibid
The Jammu and Kashmir High Court has observed:

"If a smaller number of MPs, desert their party, they become deserters who may be subjected to pains and penalties, but if a large number of MPs deserts their party .... say 20% ....... this grand scale desertion, ceases to be desertion".

The above observations imply that a 'split' in the party depending upon what is the number of those who have caused the 'split' will have to be treated on a different footing than an individual member, who either voluntarily gives up the membership of the political party by which he was set up as a candidate after his election or when he votes or abstains from voting in legislature contrary to any direction or the whip issued by that political party.

The Hon'ble High Court of Jammu & Kashmir held that Section 24-G prima facie does not bring within its scope a "SPLIT"

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16 Mian Bashir Ahmad V.State of J&K AIR 1982 J&K 26; also see the provisions of Section 24-G Jammu and Kashmir Representation of the People Act (4 of 1957) as introduced by the amending Act 1979. The Provisions of Section 24-G as reproduced herein:

"24-G.Disqualification for being a member of either House of Legislature: A person disqualified for being a member of the Legislative Assembly or the Legislative Council of the State:-

(a) If he having been elected as such member, voluntarily gives up his membership of the political party by which
within the political party and the determination as to which of the
groups of a political party after the 'Split' can be treated as
'deserters' would depend upon a number of factors and the scope of
the debate of that question is not in reference under section 70 of

he was set up as a
candidate in such
election or of which he
became a member after
such election.

(b) If he votes or abstains
from voting in such House
contrary to any
direction, or whip issued
by such political party
or by any person
authorised by it in this
behalf without obtaining
prior permission of such
party or person.

Explanation:- For the purposes
of this Section political
party means:—

(i) a political party
classified as a
recognised political
party under any law or
any rule, regulation,
order or notification
having the force of law
with respect to the
matter relating to, or in
connection with election
of the Legislative
Council, of the State;

(ii) any other political party
which is recognised party
by the Speaker of the
Legislative Assembly or
as the case may be, by
the Chairman of the
Legislative Council, as a
political party."

(Also see Speaker Legislative
Assembly V. Abdul Jabber AIR
1985 J & K 1, 4.)
IX. **Split and ideology**

If one-third of the members commit a split, then we can certainly allow, because after all, there should be room for growth or development of ideologies of a party which is in its infancy or inception. If there is a difference on that account then certainly that split could be tolerated but split simpliciter for gains should not be allowed\(^\text{18}\).

"In Congress Party, if we see its past history there were parties within the party like Swaraj Party led by Moti Lal Nehru. Some groups like socialist groups were created by even Pandit Jawahar Lal Nehru within the Congress Party. But one thing was common there. All those groups or the person who were specially advocating a particular ideal of the party, were in the party and there thinking was based on the ideological concept. Therefore, I would say that when we contemplate to allow a split to be tolerated concept and merely by one-third of the people in the party, because this is an Act which will remain on the Statute Book ibid; also see Speaker, Legislative Assembly V. Abdul Jabbar AIR 1985 J&K 1, p. 4. In this case, a complaint was filed by National Conference against 12 National Conference MLA's who had voluntarily given up the membership of the National Conference Political party which has set them up as candidates in the election. The Hon'ble High Court of Jammu & Kashmir has laid down that even if the allegation in the complaint are admitted to be true, the same do not attract the provisions of clause (a) of Section 24-G of the Jammu and Kashmir Representation of the People Act, 1957 (as introduced by the amending Act of 1979).

\(^{17}\) ibid; also see Speaker, Legislative Assembly V. Abdul Jabbar AIR 1985 J&K 1, p. 4. In this case, a complaint was filed by National Conference against 12 National Conference MLA's who had voluntarily given up the membership of the National Conference Political party which has set them up as candidates in the election. The Hon'ble High Court of Jammu & Kashmir has laid down that even if the allegation in the complaint are admitted to be true, the same do not attract the provisions of clause (a) of Section 24-G of the Jammu and Kashmir Representation of the People Act, 1957 (as introduced by the amending Act of 1979).

\(^{18}\) note 6, p. 89; also see Gupta, Shrinivas, Speaker in India: A Critical Evaluation—with Special Reference to UK & USA' (1994-95) 16&17 Law review p. 67.
not for five years or ten years but for all times to come".19

Since democracy is a sine qua non for a healthy nation, there should be national parties all over the country of good matching strength. Until it is developed, democracy in the true sense would not be developing20.

Anti Defection Law provided that the disqualification on the ground of defection shall not apply in the cases of splits in and merger of the Legislature Parties. For this purpose, a "split" will be deemed to have occurred when a group of members consisting of not less than one third of the total membership of a legislature party either breaks away from their original party or abstains from voting or vote against the whip issued by the party1.

Paragraph 3 of the Tenth Schedule of Constitution of India provides for the non-attraction of the provisions of paragraph 2 if the provisions of Para 3 are satisfied.

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19 ibid
20 ibid
1 Singh, K.N., 'Anti Defection Law and Judicial Review' (1992) 38 JPI 31,p.33
2 "3. Disqualification on ground of defection not to apply in case of split:- Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of the split in his original party and such group consists of not less than one third of the member of such legislature party-

(a) he shall not be disqualified under sub paragraph (1) of
In any case that comes up before the Speaker/Chairman seeking protection under paragraph 3 of the Tenth Schedule. The factors which are to be considered are as follows:-

(a) Whether such a claim has been made,

(paragraph 2 on the ground)

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph".
(b) whether there is such a group,
(c) Whether the group represents a faction of the original political party,
(d) Whether the faction has arisen as a result of a split and
(e) Whether it is not less than one third of the legislature party members.

Whether it is fair to make a distinction between defection by individuals and defection by groups merely because the latter might follow or might for the sake of convenience be called split of a party or merger of parties particularly when motivations behind splits and mergers or group defections may not often be very different from those for defections?

The split is a complex phenomenon. It may occur because of differences over policy and programmes, organisational principles, functioning and alignment of social forces within a political party. Paragraph 3 of the Tenth Schedule laid down that disqualification on ground of defection shall not apply to a member if he and other members of his political party constitute a group representing a faction arising as a result of the split in the original political party and such a group consist of not less than one third of the members of the legislature party.

XI State Assemblies and Split

The Haryana Vidhan Sabha Speaker dismissed a petition filed against a BJP Legislator, Shri K.L.Sharma on the ground of defection from BJP and joining the Ruling party,i.e., Congress on April 10,1992. The Legislator, Shri Sharma had formed group and split from BJP and he
formed a separate party BJP(K). His claim was recognised by the Speaker and later he merged his party to the Congress fold.

On November 6, 1991, the Speaker of Haryana Legislative Assembly was informed of the formation of a distinct group of Janta Dal (S) Party consisting of 41 members. Who recognised that group as the groups strength was more than one-third of the strength of the Janta Dal in Vidhan Sabha.

In Goa the Presiding Officers took contrary stands in the matter of recognising party splits. While one Speaker disqualified some members in December 1990, the successor in office of Speaker acting Speaker rescinded the previous orders and recognised the split and restored their membership, without a break.

The Speaker of the U.P. Legislative Assembly on November 26, 1990 accorded recognition to the fact that a split had taken place in U.P. Janta Dal Legislature party under paragraph 3 of the Tenth Schedule. Shri Mulayam Singh Yadav has 120 members and the other, under the leadership of Reoti Raman Singh which has 86 members. The Speaker rescinded his previous order dated November 12, 1990 by which he had declared 31 members as unattached. He later decided that the split in party has taken place before November 12, 1990.

The Speaker has rightly recognised the split under paragraph 3 of the Tenth Schedule. On September 3, 1993, the 11 member Haryana Vikas Party which was split by Amar Singh Dhanak and 3 others (Dharm Pal, Peer Chand and Lehri Singh) and they formed a new party H.V.P(A) under the leadership of Amar Singh Dhanak. The group requested the Speaker shri Ishwar Singh for the recognition of a legislature party and allotment.
of separate seats in the House who recognise the group. Later the group merged to the ruling congress party.

The acts mentioned in para 2 (I)(a) (b) will not attract disqualification under para 3, if the dissidents collectively constitute the numerical figure of not less than one third of the Party concerned for the purposes of split under para 3.

XII Supreme Court on Split
The Supreme Court has laid down that

"It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of symbol, be it donkey or an elephant, does give rise to an unifying effect among the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a cabinet responsible to the elected representatives of the people who constitute the lower House. The Political Parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure".

The Supreme Court has further observed:

3 Kashiya lal V. R.K.Trivedi (1985) Supple (3) SCR 1,11 (Per Venkataramiah J., as he than was)

4 ibid. In this case, the principal contention urged by the petitioner was that symbol order
"It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis in other words "on systematized differences and unresolved conflicts". That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the constitution had not expressly referred to the existence of political parties, by the amendments made to it by the constitution (Fifty Second Amendment Act, 1985 there is no clear recognition of the political parties by the Constitution".

The Supreme Court has pertinently pointed out that:

"The Tenth Schedule to the Constitution which is added by the above amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbol order is unauthorised and against the political system adopted by our country".

which is legislative in character could not have been issued by the Commission because the Election Commission is not entrusted by law the power to issue such an order regarding the specification reservation and allotment of symbols that may be chosen by the candidates at elections and challenges the Constitutional validity of the Election Symbols (Reservation and Allotment)Order, 1968.

ibid
History of provision for split

For the first time, in the fifth Lok Sabha, the Constitution (Thirty Second Amendment) Bill, 1973 was introduced on May 16, 1973 and the Constitution (Forty eighth amendment) Bill, 1978 was sought to be introduced before the sixth Lok Sabha to deal with the problem of defection. The Constitution (Thirty Second amendment) Bill 1973 which was introduced in the Lok Sabha proposed an amendment of article 102 of the constitution. Clause (3) and clause (4) of the proposed amendment Bill exempted the disqualification in case of split. Similarly the constitution (48th Amendment Bill) 1978 have para 3 in the Tenth Schedule. Clause (4)of Article 102 (as proposed to be amended by 32nd Amendment Bill, 1973.

According to the provisions of clause (3) in the Tenth Schedule the Constitution (48th amendment) Bill if twenty five percent or more members of a political party in a House resign enmasse or disobey the party whip and form a new political party or a separate group, they would not be dubbed as defectors. Thus it seems that distinction brought to be made between defection and split in a party. The basic presumption behind the proposed distinction between individual and group defection seems to be that latter was based on honest ideological differences or on disagreement or principles or policy and are not in any way motivated by consideration of personal gain in terms of money, office or power etc.

Para 3 of the Tenth Schedule to the Constitution (as was proposed to be substituted by Constitution (48th Amendment) Act, 1978. In this regard H.N. Kunzru in his minute of dissent to the Report of Committee on Defections, observed:

"In the course of the discussions in the Committee about member leaving his party and a group separating itself from its party. Chairman himself expressed the view that a change of party loyalty
A close examination of group defections ideology or honest programmatic differences have been the least significant motivations. In post-fourth general election period several defectors adorned the seat of Chief Minister ship following the group defections led by them. Except in situations of marginal majorities, it is relatively more difficult for a Lone defector to bargain with an organized party. After all, whether it is one member who crosses the floor or it is a group of members, the nature and content of the act is same and were cannot dup one as defection and the other as the 'split' in the party and thus the distinction made by the Bills is not valid.

XIII  Merger and Tenth Schedule

Betraying a party and the voters and thereafter joining those who purchased the member is what the public understand defection, But when the first half of metempsychosi, if performed in the prescribed manner, will be recognised under a new label called splitting, and the

by a group could not be treated in the same way as similar action by an individual be brought out in the report so that the definition of defector may not be so narrow as to treat individuals and group alike. It should be made clear that the members of a party are entitled to leave it when the party follows a course which was not contemplated at the time of the General Election or which they honestly differ from".

Similar views were expressed by another elder stateman, Rajaji. Sharma, Mool Chand, 'Politics of Defections and Democracy' (1979) 13 JCPS 328, 343.
consummation can be effected by what is called merger, whatever way it is done, defection gets the status of legalised perfidy ⁸.

Even the constitution (32nd Amendment) Bill, 1973 which was introduced in the Lok Sabha on May 16, 1973 had proposed to insert by amendment clause (3) and (4) which recognised the concept of split. A similar provision was intended to be introduced by Constitution (48th Amendment) Bill, 1978.

The Speaker of the Lok Sabha has observed⁹:

"If a member does not abide by the whip issued to him, in a company of 1/3 members of his party in Parliament or if he leaves the party in a company of 1/3 Members in his Parliamentary Party or if he joins another party in a group of 2/3 Members of his party in Parliament under paragraph 3 or paragraph 4 of the Tenth Schedule, he would not be punished and subjected to disqualification of his membership of the legislature".

The Learned Speaker further observed:

"The Tenth Schedule relates to split in the Parliamentary Party and not the political party outside the Parliament. The law proposed to protect the Parliamentary party, having elected Members and does not protect the political party outside the House. It is meant to curb defection. It is not meant

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⁸ Menon, C.Achutha, 'Defection Legalised' AIR 1987 Journal 149.

⁹ 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 Janta Dal Case, Lok Sabha Secretariat, New Delhi, June 1993, P.29.
Para 4 of the Tenth Schedule to the Constitution of India provides for that a member shall not be disqualified under paragraph 2 (1) where his political party merges with another political party and satisfies the provisions of para 4.

Paragraph 4 of the Tenth Schedule is analogous to paragraph 3 and the analysis in regard to paragraph 3 applied to paragraph 4 except that Paragraph 4 deals with the merger of an original political party with

ibid, p. 57.

"4. Disqualification on ground of defection not to apply in case of merger:-
(1) A member of a House shall not be disqualified under sub paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and other members of his original political party -

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger, or

(b) have not accepted the merger and opted to function as a separate group.

and from the time of such merger, such other political party or group as the case may be shall be deemed to be the political party to which he belongs for the purposes of sub paragraph (1) or paragraph 2 and to be his original political party for the purposes of this sub paragraph.

(2) For the purposes of sub paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if not less than of two third of the members of the legislature party concerned have agreed to such merger".
another and for a merger to be deemed to have taken place in the political parties,

"not less than two thirds of the members of the legislature party concerned must have agreed to such merger".

Paragraph 4 (2) of the Tenth Schedule makes it clear that no merger of a political party in another can be deemed to have taken place, unless at least two thirds of the members of the legislature party concerned have already agreed. Thus, the merger of a political party outside the House becomes dependent on the agreement of two third majority in its legislative wing, for the purposes of the Tenth Schedule.

The Tenth Schedule does not take into its fold the outside and organisational events. The Tenth Schedule mentions the direction of the political parties, etc. In its clause (b) of sub para (1) of para 2, the direction to a member of the House can be from a functionary of a political party outside the House according to the Constitution of the respective parties. The label which a member carries and ultimately goes to constitute his Legislature party under rule 4 (2) is an agency outside the House.

A member is disqualified for giving up that label and not the membership of the Legislature party. The operation of the Schedule is not exclusively confined to the four walls of the House, where the Speaker's writ runs. If the intention of the Parliament in enacting the Schedule is to confine the Speaker merely to count the numbers of the members of the legislature party, there is no need to mention the original political party in paras 3 and 4 in connection with split or merger. There is an inbuilt mechanism in the Schedule to maintain nexus between the political party...
and the Legislature party which is essential for the effective functioning of parliamentary form of Government.

The Tenth Schedule casts a duty on the Speaker not to lose sight of the nexus while formalising the split or merger. A party split outside the House without the support of 1/3rd members inside the House renders it to wipe out its identity in the House and the members who engineer a split in legislature party without there being a corresponding split in the party outside make themselves vulnerable to forego their seat in the House albeit their command over 1/3rd legislature party.

A further question is whether split is a one time affair or a continuous process allowing the members to make up their mind as to which faction they should join. According to Anti Defection law split is a continuous process. From the time of split in the original political party outside the House till the question of disqualification of a member comes before the Speaker and till he makes an inquiry, and gives his verdict.

Anti defection law does not confer the role of arbiter upon the Speaker to decide and recognise split and merger of parties save in appropriate proceedings for disqualification. In such proceedings the Speaker is bound to inquire into the split of original political party. So far, the Speakers acted on the representation of certain members foisting the split in Legislature party without a corresponding split in the original political party and in the said proceedings what they decided was whether the breakaway faction has the required strength or not at the appropriate time of break or whether the expelled members could join with the breakaway faction to satisfy the number game. in this light, the split was considered as one time phenomenon.
On February 25, 1991, the Speaker of the Arunchal Pradesh legislative Assembly recognised the seven members of the Janta Dal legislative Party their number being not less than two thirds of the members of the Janta Dal and their merger is not permissible under paragraph 4 of the Tenth Schedule to the Constitution.

Four of the seven members were expelled by the President State Unit of the Janta Dal on 19 and 21 February 1991 and the Speaker was requested to disqualify the other three, as they did not constitute the one third or two third to legally qualify for a split or merger. Even the expelled four member required to be disqualified for having joined the congress in the face of explosions. The Speaker in his order dated July 1, 1991 upheld his previous order and held that that order cannot be questioned. On November 22, 1991, the Speaker recognised the merger of Janta Dal Legislature Party having a lone member of the House with the Congress (I) Legislative Party fold.

Recently the Ruling Arunchal Pradesh Congress Legislature Party had a split leaving only 4 members, the 41 members in a House of 60 split the Congress Party and floated a regional party as 'Arunchal Congress' and the split group was recognised as Arunchal Congress in the House.

On the basis of the material placed before the Speaker, whether there was split in the original political party or not, burden of proof lies on such member who claims to have form such a group, if the declaration signed by the members who formed a separate group is produced before the Speaker. The Supreme Court has held that the facts established the split and constitution of a group.

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