CHAPTER –2

HISTORICAL BACKGROUND OF ANTI-DEFECTION LAW

Before discussing the existing provisions of anti-defection law, the researcher deems it fit to discuss the history of the Anti-Defection law in India. It is necessary to discuss the history of the Tenth Schedule to the Constitution of India to understand the aims, objectives and provisions of the different Constitutional Amendment Bill which led to the incorporation of the Tenth Schedule to the Constitution of India. It is the historical background of the anti-defection law which throws light over the rationale behind the introduction of Anti-defection law in India.

The problem of defections has not been new to the functioning of the Indian Parliamentary democracy. Indian politics had seen defections right from the pre-independence Central Legislative Assembly and Provincial autonomy days. During Montford Reforms, Shyam Lal Nehru, a member of the Central Legislature who was elected on the Congress ticket but subsequently he crossed the floor and joined the British Side. At that time Pandit Moti Lal Nehru who was leader of the Assembly party strongly
criticized and condemned him and Mr. Shyam Lal Nehru was expelled from the party.\textsuperscript{36}

In 1948 the Congress Socialist Party left the Congress and directed all its members to resign from their seats in the assemblies and to seek re-election. But this ideal could not become a precedent. In Uttar Pradesh, again in 1950, twenty three MLAs defected from the Congress and formed the Jana Congress. Again in 1958 some ninety eight MLAs openly defied the Government which led to the fall of the Sampurnanand ministry. The Praja Socialist Party (PSP) is a good case study of defections. In 1953 the PSP leader Prakasam defected from the PSP and joined the Congress to form the Government in Andhra Pradesh.\textsuperscript{37} Thanu Pillai from the Travancore-Cochin is another instance of defection from the PSP. More or less some defections have been taking place in all the states but did not succeed to create more than a ripple. For instance, during the period 1957-1967, ninety seven members defected from the Congress and 419 defected to it. While in 1967-68 within a year 175 defected from it and 139 defected to it. During the period of 1957-1967, ninety three defected from the PSP and only 11 to it.\textsuperscript{38}

\textsuperscript{36} Moolchand Shyam, “Politics of Defections and Democracy” (1979) 13 JCPS 328, 329


\textsuperscript{38} Ibid
2.1. Fourth General Election- Formation of Coalition Government

Failure of the political parties in the fourth general elections held in the year 1967, to secure absolute majority to enable many of them to form the Government at the Centre as well as in the States gave rise to widespread political defections by elected M.P.s and M.L.A.s. Absence of a strong law on registration of political parties further accentuated the problem. Some M.L.A.s, just with the sole motive for monetary gain and for grabbing power, changed parties three or four times in a day.

In the fourth general election, Congress retained majority in the Lok Sabha by securing 283 seats out of 520 seats but lost absolute majority in eight of the Sixteen States of the Union that went to the polls.\(^{39}\) Even in States where the party retained control, its strength was much depleted.\(^{40}\) However, in the eight States where Congress has failed to get absolute majorities no single party has taken its place.

The 1967 elections initiated the dual era of short-lived coalition governments and politics of defection. However, the election broke Congress’s monopoly of power in the states. As a consequence of fourth general elections, the virtual monopoly of political power by Congress

\(^{39}\) In fourth general Election Congress lost majority in the State Assemblies of Kerala, Madras, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal.

party was shattered away. The highly disunited opposition saw in the situation an opportunity to seize power. The political parties which fought tooth and nail against each other at the polls forget their ideological differences and came forward to share power on the basis of what was called the common minimum programme.

Between the fourth and the fifth general election in 1967 and of the Lok Sabha and the Legislative Assemblies in the States and the Union Territories, there were nearly 2,000 cases of defection and counter-defection. By the end of March 1971 approximately 50 per cent of the legislators had changed their party affiliations and several of them did 1972 from among the 4,000 odd members so more than once – some of them as many as five times. One MLA was found to have defected five times to be a Minister for only five days. For some time, on an average more than one legislator was defecting each day and almost one State Government falling each month due to these changes in party affiliations by members. In the case of State Assemblies alone, as much as 50.5 per cent of the total number of legislators changed their political affiliation at least once. The percentage would be even more alarming if such States were left out where Governments happened to be more stable and changes of political affiliations or defections from parties remained very infrequent. That the lure of office played a dominant part in this “political horse-trading” was obvious from the fact that out of 210 defecting
legislators of the various States during the first year of “defection politics”, 116 were included in the Councils of Ministers in the Governments which they helped to form.\textsuperscript{41}

The phenomenon of defection became acute and apparent after the fourth General Elections in 1967 about which the figures speak for themselves. Whereas up to 1967, there have been about only 400 defections, within one year from the election of 1967, there were 500 odd defections, of which the figures also say, 118 were by persons who became Ministers or Ministers of State. The problem became so important from the point of view of preserving the best traditions of democracy and of setting certain norms of political behaviour.\textsuperscript{42}

The following table\textsuperscript{43} indicates the number of defection that took place between March 1967 to March 1970 from one party to another or to independent side. In six states namely Haryana, Punjab, Bihar, Madhya


\textsuperscript{42} On October 30, 1967, a Haryana Legislator, Gaya Lal who had earlier crossed the floor to join the United Front Ministry returned to the opposition thereby reducing the Front strength to 38 and increasing the opposition strength to 41. But within 9 hours, Gaya Lal once again changed his party to rejoin the United Front; he became a Parliamentary Secretary on November 1, 1967. Thus by defecting thrice within a fortnight, Gaya Lal set a new record in the chronicle of defection politics in Haryana. It is said that the title of "Aya Ram Gaya Ram" was given to Gaya Lal by Rao Birender Singh.

\textsuperscript{43} Table is taken from Article "Aya Ram Gaya Ram: The Politics of Defection" by Paras Diwan, published in JILI, Vol.21, July-September 1979, No. 3
Pradesh and West Bengal even the Chief Minister-ship went to a defector and most of the defectors were included in the ministry.\textsuperscript{44}

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Name of the States</th>
<th>Defection by member of political party</th>
<th>Defection by Independent member</th>
<th>Total No. of Defection</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Uttar Pradesh</td>
<td>294</td>
<td>58</td>
<td>352</td>
</tr>
<tr>
<td>2</td>
<td>Madhya Pradesh</td>
<td>237</td>
<td>25</td>
<td>262</td>
</tr>
<tr>
<td>3</td>
<td>Bihar</td>
<td>161</td>
<td>41</td>
<td>202</td>
</tr>
<tr>
<td>4</td>
<td>Gujarat</td>
<td>142</td>
<td>16</td>
<td>158</td>
</tr>
<tr>
<td>5</td>
<td>Andhra Pradesh</td>
<td>73</td>
<td>57</td>
<td>130</td>
</tr>
<tr>
<td>6</td>
<td>Punjab</td>
<td>114</td>
<td>16</td>
<td>130</td>
</tr>
<tr>
<td>7</td>
<td>Haryana</td>
<td>85</td>
<td>24</td>
<td>109</td>
</tr>
<tr>
<td>8</td>
<td>Mysore</td>
<td>79</td>
<td>23</td>
<td>102</td>
</tr>
<tr>
<td>9</td>
<td>Orissa</td>
<td>61</td>
<td>3</td>
<td>64</td>
</tr>
</tbody>
</table>

\textsuperscript{44}Supra Note 2
2.2. Formation of the Committee on defection

On August 11, 1967 a prominent Congress member of the Lok Sabha, P.Venkatasubbaiah who was the Secretary of Congress party in Parliament, moved a non official resolution seeking appointment of a Committee on Defections. The Lok Sabha discussed the matter at length on November 24 and December 8, 1967. The resolution was adopted by the House with an amendment moved by the S.S.P. leader Madhu Limaye. The resolution as passed by the House reads as follows:

<table>
<thead>
<tr>
<th></th>
<th>Kerala</th>
<th>35</th>
<th>5</th>
<th>40</th>
</tr>
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<tbody>
<tr>
<td>11</td>
<td>Rajasthan</td>
<td>25</td>
<td>6</td>
<td>31</td>
</tr>
<tr>
<td>12</td>
<td>Tamilnadu</td>
<td>19</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>13</td>
<td>Maharashtra</td>
<td>19</td>
<td>1</td>
<td>20</td>
</tr>
<tr>
<td>14</td>
<td>Himachal Pradesh</td>
<td>5</td>
<td>7</td>
<td>12</td>
</tr>
<tr>
<td>15</td>
<td>Assam</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>16</td>
<td>Jammu &amp; Kashmir</td>
<td>3</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>1562</td>
<td>313</td>
<td>1875</td>
</tr>
</tbody>
</table>
“This House is of opinion that a high level Committee consisting of representatives of political parties and constitutional experts set up immediately by the government to consider the problems of legislators changing their allegiance from one party to another and their frequent crossing of floor in all its aspects and make recommendations in this regards”.

Madhu Limaye’s amendment sought to omit the concluding portion of the original resolution which had provided for the proposed Committee’s evolving of special machinery and taking the effective measures by to suitable legislation to arrest this growing phenomenon which is assuming alarming proportion so that the country can function on sound and healthy lines of parliamentary democracy. He was of the opinion that it would be the contrary to the provisions of the Constitution to impose by law any restrictions on floor crossing.45

The Committee which was constituted of the Union Home Minister as Chairman, the Union Law Minister, and the Union Minister for Parliamentary Affairs, the representatives of eight political parties and three independent groups recognised by the Speaker in the Lok Sabha. The other members were, Shri P. Venkatasubbaiah, Shri

Jaya Pakash Narayan, Shri H.N. Kunzru, Shri C.K. Daphtary, Shri H.M. Seervai, Shri M.C. Setalvad and Shri Mohan Kumarmangalam.

Representatives of political parties are as follows-

1. Prof. N.G. Ranga – Swatantra party
2. Prof. Balraj Madhok – Jan Sangh party
3. Shri S.N. Dwivedy - PSP
4. Shri Madhu Limaye - SSP
5. Shri Bihupesh Gupta - CPI
6. Shri P. Ramamurti - CPM
7. Shri Ambazhagan - DMK
8. Shri N.C. Chatterjee – Progressive Group
9. Shri Raghuvir Shastri – Nirdaliya Sanghathan
10. Dr. Karni Singh – Independent Parliamentary Group

In pursuance of the Lok Sabha Resolution, the Government of India decided in February 1968 to appoint a Committee in the name of the Committee on Defections under the Chairmanship of the then Union Home Minister, Shri Y.B. Chavan to study the problems of political defections and suggest remedial measures in this connection. Informing the Lok Sabha of the appointment of the Committee on 21 March, 1968, the Home
Minister described defections as “a national malady” which was “eating into the very vitals of our democracy”.

The Committee held six meetings on March 26, April 18, May 12, July 14, August 8 and September 28, 1968. The report of the Committee on Defections was signed on January 7, 1969 and was presented to Parliament on February 18, 1969.

In drawing up its report and formulating its recommendations, the Committee on defections placed before itself the following considerations:

(a) There can be no perfect or infallible deterrent for the kind of political defections that are rooted in political irresponsibility and opportunism and create instability, besides bringing the functioning of the democratic institutions into disrepute;

(b) The task of devising remedial measures for a complex political problem has to balance carefully the need for ensuring political stability with -

i. The natural processes of organic growth of parties;

ii. The inevitability of a period of transition preliminary to the forgoing of ideological polarisation or clarity, with uncertainties attendant on the transition; and

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47(1968) L.SD (March 21, 1968), RSD (August 12, 1969); also quoted in, Subhash C. Kashyap, “Anti-defection law and Parliamentary Privileges”, Third Edition Pg.3,

48Supra note 1, Pg.7.
iii. The avoidance of rigidity which would impinge adversely on honest and genuine dissent or change of convictions or on readjustment of party alignments, in the form of merger, splits, etc., as part of the process of reaching ideological polarisation or clarity;

(c) The best legislative or constitutional device cannot succeed without a corresponding recognition on the part of political parties of the imperative necessity for a basic political morality and the observance by them of certain properties and decencies of public life, and their obligations mutually to one another and in the last analysis to the citizens of the country; and

(d) The problem requires to be attacked simultaneously on the political, educational and ethical planes so that by an intensive political education both of the elite and the masses, a full consciousness of the values of democratic way of life is created.49

The Committee in its report dated 7th January, 1969 observed:

“Following the Fourth General Elections, in the short period between March, 1967 and February, 1968, the Indian political scene was characterised by numerous instances of change of party

allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and the Fourth General Elections, at least 438 defections occurred in these 12 months alone. Among Independents, 157 out of a total of 376 elected, joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections. The other disturbing features of this phenomenon were: multiple acts of defections by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of the legislature on the part of defectors to political proprieties, constituency preference or public opinion, and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections.”

2.3. Recommendation of Committee on Defection

The Committee on Defections after a careful consideration has accepted the following definition of ‘defector’: “An elected Member of a Legislature who had been allotted the reserved symbol of any political party, can be said to have defected if, after being elected as a Member of
either House of Parliament or of the Legislative Council or the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to or association with such political party, provided his action is not in consequence of a decision of the party concerned."

This definition was accepted by the Committee on Defections and made several recommendations suggesting ethical, political, constitutional and legislative solution of the problem in hand. The main recommendations of the Committee were:

(i) The political parties themselves should arrive at a Code of Conduct inter alia providing against a defector being taken into the fold of another party;

(ii) A representative should be deemed to be bound to the party under whose aegis he wins the election. This follows from a clear understanding of the nature and character of representation and the duties of an elected representative;

(iii) No one who was not initially a member of the Lower House should be appointed as Prime Minister or Chief Minister and necessary constituted amendment in this regard should be given prospective effect;

(iv) Every defector should be debarred from appointment as a Prime Minister, Chief Minister or any minister for a prescribed period or until he gets himself re-elected;
(v) There should be a ceiling on the size of ministries both at the Centre and the State levels. This was considered necessary because the number of people who were included in the Council of Ministers sometimes appears to be unending. As the life of the Government proceeded, the Council of Ministers went on inflating. And sometimes it was found that most of the members of the party forming the government were in the Council of Ministers. Therefore, in order to find the solution to this problem, the recommendation was made by the Committee that there should be limitation on the size of the Council of Ministers.

(vi) The Committee on Defections recommended, inter alia: “Articles 102 (1)(e) and 191 (1)(e) of Constitution empower Parliament to make a law providing for disqualification a person for being chosen as, and for being, a member of either House of Parliament or of the State Legislative Assembly or Legislative Council. As standing for election to Parliament or State Legislature is only a statutory right as distinguished from a fundamental right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable restriction in public interest. On that basis, it is possible to provide in a special legislation that a legislator who renounces the membership of or repudiates his allegiance to a political party shall
be disqualified from continuing as a member of Parliament/State Legislature.”

(vii) Provision for recall may not be advisable or practicable

The then Home Minister Shri Y.B. Chavan while concluding the discussion by responding to the House on the recommendations of the “Committee on Defections” had observed -

“Therefore, the major field of recommendations that the Committee has made is the legislative measures that this Parliament should undertake. One recommendation is about the size of the Council of Ministers. The second is about barring the members who have defected from the party in terms of definition that the Committee has given. The third is that the Chief Minister of a State or the Prime Minister of the country should be member of the Lower House and not of the Upper House. These are the three major recommendations of this Committee.”

After discussion before the Parliament, no measure was taken till 1973. The condition of the defection continued unchecked. During March 1967 to March 1971 some thirty two Governments were toppled. Significantly, almost every single case of collapse of State Government was the direct result of change of allegiance by legislators. Several other States where Government did not topple were also affected, to a larger or smaller extent.

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degree, by this politics of defection. After 1971 election to Lok Sabha the three Governments in Mysore, U.P. and Gujarat fell in quick succession in last week of March 1971, because of group defections.\(^5\)

### 2.4. The Constitution (Thirty-Second Amendment) Bill 1973

Keeping in view the recommendations of the Committee on Defection, the Constitution (Thirty-Second Amendment) Bill, 1973 was introduced in the Lok Sabha on 16\(^{th}\) May, 1973, seeking to amend Art. 102 and 191 of the Constitution and to provide, inter alia, for disqualifying a Member from continuing as a Member of either House of Parliament or the State Legislature on his voluntarily giving up of the membership of the political party by which he was set up as a candidate at such election or of which he became a Member after such election, or on his voting or abstaining from voting in such House contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf without obtaining prior permission of such party, person or authority.

The Bill also provided that the Prime Minister/Chief Minister who is not a member of the House of the People/Legislative Assembly as the case may be shall acquire is membership within six months of assumption

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of that office. The Statement of Objects and Reasons appended to the Bill stated:

“When the Report of the Committee on Defections was considered, it was felt that the recommendations that a defector should be rendered ineligible for certain offices of profit for a stipulated period would not provide an adequate solution and that it would be more appropriate to amend the Constitution with a view to disqualifying a defector from his continued membership of the legislature.”

It was proposed to insert the following clause to Article 102 of the Constitution-

2. A person shall be disqualified for continuing as a member of either House of the Parliament-

a) If he, having been elected as such member, voluntarily gives up his membership of the political party by which he was set up a candidate in such election or of which he became member after such election,

b) If he votes or abstains from voting in such House contrary to any direction issued by such political party or by any person or authority

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53 The Constitution (32nd Amendment) Bill, 1973 proposed to amend Article 75 by incorporating the following clause (5) - “5. Prime Minister who for any period of six consecutive months is not a member of the House of the People or any other Minister who for any period of six consecutive months is not a member of either House of the Parliament, shall at the expiration of that period cease to be the Prime Minister or as the case may be a Minister” A similar provision was proposed to be substituted by clause (4) of Article 164.

54 The Constitution (Thirty-second Amendment) Bill, 1973
authorized by it in this behalf without obtaining prior permission of such party; person or authority.

3. Notwithstanding anything in clause (2) a member of either House of the Parliament shall not be disqualified under sub clause (a) of clause (2) on the ground that he has voluntarily given up his membership of any political party if he has given up his membership of such political party by reason of split therein.

4. Notwithstanding anything in clause (2), where there has been split in any political party (referred to in this clause as “Original political party”) and any group of members thereof has been registered under any law or any rule, regulation, order or notification having force of a law with respect to matters relating to, or in connection with, election to either House of Parliament as a separate political party (referred to in this clause as “New political party”) then a member of either House of Parliament who belonged to the Original political party and who became member of the New political party shall not be disqualified under sub-clause (b) of clause (2) on the ground that he, at any time after the registration of the new political party, has voted or abstained from voting contrary to any direction of the
original political party or any person or authority authorized by it for the purpose of that sub clause."

The Constitution (32nd Amendment) Bill, 1973 was a very short document consisting of ten clauses. This amendment sought to amend eight articles of the Constitution namely Articles 75, 101, 102, 103, 164, 190, 191 and 192. But it would be seen that the recommendations of the Committee on Defections had not been incorporated in the Constitution (32nd Amendment) Bill, 1973. On the other hand, proposal which was opposed by some members of the Committee on Defection or which was not at all considered by the Committee included in the proposed amendment Bill.

Clauses 2 and 6 of the Bill seek to amend Articles 75 and 164 with a view to implement the proposal that the Prime Minister of India and the Chief Minister of the States should be the Member of the Lower House of the respective legislatures. In case a person who is not a member of the Lower House is appointed as the Prime Minister or Chief Minister, he cannot continue as such for more than six months without getting elected to that House. Clause 10 provides that the amendment of article 164 shall not be applicable to any present incumbents of the office of the Chief Minister till the expiry of a period of six months.

55 A similar provision was proposed to be substituted by amendment to Article 191 of the constitution
Clause 4 and 8 of the Bill sought to disqualify a person from continuing to be a Member of Parliament or State Legislature if he voluntarily gives up the membership or votes or abstains from voting against the direction of the party by which he was set up a candidate for election. But in the Bill, it was also provided that the proposed disqualification shall not apply to those cases where a legislator resigns from or votes against his party by reason of split in his party.

Clause 5 and 9 provided that the President and the Governor, as the case may be, shall not entertain any question regarding the disqualification of a legislator unless it is referred to him by the political party concerned. However, the Bill left the Independent Members or Members of the smaller unrecognized parties completely out of the purview of the disqualification clause.

It is pertinent to mention here that, under the Constitution (32nd Amendment) Bill 1973, ‘Political Party’ has been defined to mean any party classified as recognized political party under elections laws or any other party recognised by the Speaker or Chairman of the House as a political party and consisting of not less than 1/15th of the total membership of such House. Again, the Constitution (32nd Amendment) Bill 1973, did not include independent MPs and MLAs within its purview.

The Constitution (32nd Amendment) Bill was referred to a Joint Committee of two Houses. However, before the Committee could
complete its deliberations, the Lok Sabha was dissolved on 18\textsuperscript{th} January, 1977 and the Bill lapsed.

2.5. Election Commission Recommendation regarding Anti-Defection Law

The Election Commission of India in 1977 made a specific recommendation that defection of legislators from one political party to another should be prohibited by providing that some other disqualifications culminating into vacation of seat should result from such defection.

The Election Commission of India had expressed its dissatisfaction regarding the unethical practice of defection which adversely affected the Indian democracy and said that-

“The Fourth General Elections of 1967 brought in its trail a wind of swift changes in the political atmosphere of this country. That wind is still blowing sometimes with the velocity of a storm and other times at a lower speed. Perhaps in a developing democracy as ours is that is not quite unexpected and that may even be regarded as teething trouble of a healthy growing child.”\textsuperscript{56}

“When the results of the Fourth General Elections of 1967 were declared, it was found that the Indian National Congress which had till then have been the dominant political party throughout India had lost its majority in a number of State Legislative Assemblies and its majority in

\textsuperscript{56} Election Commission Report on the mid-term General Election in India 1968-69.
the House of People had also drastically dwindled. This not only resulted in the formation of non-congress Governments in a number of State Assemblies but also forgot the election promises and pledges held out to the electorate at the time of election by and on behalf of parties by whom they were sponsored and started defecting in large numbers in quick succession from their respective parties. The elected representatives forgot that defection and re-defection from one party to another is not paying in the long-run, and more often than not it acts as a boomerang hitting the person by whom it is resorted to. The moral consequences of defection and floor-crossing are sometimes far-reaching and serious”.

2.6. The Constitution (Forty-Eight Amendment) Bill, 1978

When the Constitution (32nd Amendment) Bill 1973, lapsed with the dissolution of the House on 18th January, 1977, the Election Commission of India in 1977 made a specific recommendation that defection of legislators from one political party to another should be prohibited by providing that such defection shall result in vacation of seat held by the legislator concerned in Parliament or the State Legislatures, as the case may be.

But at the same time, the Commission felt that no amendment to the Constitution would be required for that purpose except an amendment to

\[57\] Supra note 50, pp.275-276.
the Representation of the People Act, 1951. The contentious matter was referred to a Committee headed by the then Union Home Minister, Choudhary Charan Singh, and on the basis of the recommendations of the Choudhary Charan Singh Committee, another Bill viz, the Constitution (Forty-Eight Amendment) Bill 1978 was introduced in the Lok Sabha on 28th August, 1978.

Unlike the earlier Bill, this Bill sought to specify defection from a Member’s original political party as a disqualification under Art. 102 or 191, as the case may be. A schedule to be called as the ‘Tenth Schedule’ was also proposed to be inserted in to the Constitution for making detailed provisions as to disqualification on the ground of defection. Paragraph 2 in the proposed Tenth Schedule lays down as follows:

“Subject to the other provisions of Paragraph 3, a person shall be disqualified on the ground of defection for continuing as a member of a House

(a) If he voluntarily gives up his membership of the political party to which he belongs or

(b) If he votes in such House contrary to any direction issued by the political party to which he belongs by any person or any authority authorized by it in this behalf, without obtaining the prior permission of such political party, person or authority
and he has been expelled from such political party within thirty
days of such voting on the ground that he so voted.”58

Definition of Political Party’ – Paragraph 1 of the Tenth Schedule to
the Constitution proposed by the Constitution (48th Amendment) Bill,
1978, defined Political Party in relation to a House as follows:

i. An association or body of citizens of India which is registered or
   deemed to be registered under this schedule Xth Schedule) with
   the Election Commission for the purpose of elections to such
   House, or

ii. An association or body of members of the House (whether or not
    such association or body includes other person) which is
    recognised by the Chairman or as the case may be, the Speaker
    of such House as a political party for the purpose of this
    schedule.”59

Paragraph 3 of the proposed Tenth Schedule which was proposed to be
substituted by the Constitution (48th Amendment) Bill, 1978 read as
follows:

“A member of a House shall not be disqualified under Paragraph 2
if he gives up his membership of his original political party and

58 Paragraph 2 of the Constitution (48th Amendment) Bill, 1978
59 The Constitution (48th Amendment) Bill, 1978
becomes a member of a new political party formed as a result of split in his original political party.

Provided that (i) not less than 25% of the members of the legislative party concerned or where the strength of such legislative party is less than twenty not less than five members of such party are members of the new political party.

The new political party has been recognized by the Chairman or the case may be, the Speaker of such House or registered with the Election Commission under this Schedule.”

After a comparative examination of the two Bills, it is found that both the Bills envisaged somewhat similar approach towards the problem of defection. Under the 1978 Bills, split cases were exempted and termed as ‘genuine split’ in a party. However, a split being defined as the breaking away of not less than 25% of the members of the party in the legislature and where a party has lesser than 20 legislators, the split may be affected by breaking away of not less than five members.

On the other hand the Constitution (32nd Amendment) Bill, 1973 also provided that the proposed disqualification shall not apply to those cases where a legislator resigns from, or votes against his party by reason of split in the party. Political party has been defined to mean any party classified

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*Supra Note 59*
as a recognised political party under the election law or any other party recognised by the Speaker or the Chairman of the House as the case may be, as a political party and consisting of not less than 1/15th of the total membership of the House. Both the Bills left the independent members completely out of the purview of disqualification clause inserted in the proposed amendment Bills.

The Constitution (Forty Eight Amendment) Bill, 1978 was opposed at the stage of introduction itself both by some ruling party members as well as the opposition as certain features of the Bill did not satisfy them. After some discussion, the motion of introduction of the bill was withdrawn by leave of the House.

In 1982, an alarming picture of political defections was presented by the Jammu and Kashmir High Court in the case of Mian Bashir Ahmad vs. State of Jammu and Kashmir61. The number of defections as shown in the Judgment was 41 in 1977, 57 in 1978, 69 in 1979, and 74 in 1980. What could be the worse political indiscipline and betrayal to the democratic ethics than this?

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After seven years from the lapse of the second Bill sufficient damage having been caused to the political moral and ethics in the country and the President of India said in his Address to both Houses of Parliament assembled together on 17th January, 1985 that the Government intended to introduce in that session a Bill to outlaw defections. In fulfilment of that assurance, the Government introduced the Constitution (Fifty-Second Amendment) Bill in the Lok Sabha on 24th January, 1985. The Statement of Objects and Reasons appended to the Bill stated as such:

1. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in nominated the current session of Parliament an anti-defection Bill. The Bill is meant for out-lawing defections and fulfilling the above assurance.

2. The Bill seeks to amend the Constitution provides that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a member of Parliament or a State Legislature, who is a member of a political party at the time he takes his seat or who becomes a member of a
political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent Member of Parliament or a State Legislature shall also be disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry or six months from the date on which he takes his seats shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of political parties. A special provision has been included in the Bill to enable a person who has been elected as a presiding officer of a House to sever his connection with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.
3. The Bill seeks to achieve the above objects.

In order to bring about a national consensus on the Bill, the Prime Minister held prolonged consultations with the leaders of opposition groups. The Government acceded to the demand of dropping a controversial clause from the Bill relating to disqualification of a member on his expulsion from his political party for his conduct outside the House. Intervening in the debate, the then Prime Minister Rajiv Gandhi said that the Bill was only “the first step towards cleaning up public life” and that the Government would initiate other reforms in consultation with the opposition.

The Bill was passed by Lok Sabha and Rajya Sabha on 30th and 31st January, 1985, respectively. It received the President’s assent on 15th February, 1985. The Act came into force with effect from 1st March, 1985 after issue of the necessary notification in the Official Gazette.

The Constitution (Fifty-Second Amendment) Act, 1985, amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures and added a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on grounds of defection. The Tenth Schedule inter alia provided that:
(i) An elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and nominated member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party.\textsuperscript{62}

(ii) An independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election\textsuperscript{63}

(iii) A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months.\textsuperscript{64}

(iv) No disqualification would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party\textsuperscript{65} or merger of a party in another provided that in the event of a split the group consists of not less than one-third of the members.

\textsuperscript{62} Paragraph 2(1) of the Tenth Schedule of Constitution of India
\textsuperscript{63} Paragraph 2(2) of the Tenth Schedule of Constitution of India
\textsuperscript{64} Paragraph 2(3) of the Tenth Schedule of Constitution of India
\textsuperscript{65} Paragraph 3 of the Tenth Schedule to the Constitution of India Para 3 omitted by the Constitution (Ninety-First Amendment) Act, 2003, s.5 (w.e.f.1.1.2004)
of the legislature party and in case of a merger of not less than two-thirds of the members of the legislature party concerned.\textsuperscript{66}

(v) No disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to that office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State, if he serves his connection with his political party.\textsuperscript{67}

(vi) The question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House; where the question is with reference to the Chairman or the Speaker himself it will be decided by a member of the concerned House elected by it in that behalf.\textsuperscript{68}

(vii) The Chairman or the Speaker of a House has been empowered to make rules for giving effect to the provisions of the Schedule. The rules are required to be laid before the House and are subject to modifications/disapproval by the House.\textsuperscript{69}

(viii) All proceedings in relation to any question as to disqualification of a member of a House under the Schedule will be deemed to be

\textsuperscript{66} Paragraph 4 of the Tenth Schedule of Constitution of India
\textsuperscript{67} Paragraph 5 of the Tenth Schedule of Constitution of India
\textsuperscript{68} Paragraph 6(1) of the Tenth Schedule of Constitution of India
\textsuperscript{69} Paragraph 8 of the Tenth Schedule of Constitution of India
proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.\textsuperscript{70} and

(ix) Notwithstanding anything in the Constitution, no court will have any jurisdiction in respect of any matter connected with the disqualification of a member of a House. Paragraph 7 of the Tenth Schedule of Constitution of India.\textsuperscript{71}


Demands have been made from time to time in certain quarters for strengthening and amending the Anti-defection Law as contained in the Tenth Schedule to the Constitution of India, on the ground that these provisions have not been able to achieve the desired goal of checking defections. The Tenth Schedule has also been criticised on the ground that it allows bulk defection while declaring individual defection as illegal. The provision for exemption from disqualification in case of split as provided in paragraph 3 of the Tenth Schedule to the Constitution of India has, in

\textsuperscript{70} Paragraph 6(2) of the Tenth Schedule of Constitution of India

\textsuperscript{71} Para 7 has been declared by the Apex court as ultra vires of the constitution in Kihota Hollohon Vs. Zachilhu & others, AIR 1993, SC 412
particular, come under severe criticism on account of its destabilising
effect on the Government.\textsuperscript{72}

The Committee on Electoral Reforms (Dinesh Goswami Committee) in its report of My, 1990, the Law Commission of India in its 170\textsuperscript{th} Report on “Reform of Electoral Laws” (1999) and the National Commission to Review the Working of the Constitution (NCRWC) in its report of March 31, 2002 have, inter alia, recommended omission of paragraph 3 of the Tenth Schedule to the Constitution of India pertaining to exemption from disqualification in case of splits. The Constitution (Ninety-First Amendment) Act, 2003 accepted and implemented many of these recommendations of the Commission even if only partially. Thus, a new Article 361 B was inserted into the constitution of India and Articles 75 and 164 were amended. The Constitution (Ninety-First Amendment) Act, 2003 provides that-

(i) the total number of Ministers in the Council of Ministers both at the Union and the State level shall not be more than 15\% of the number of Members in the House of the People, provided that the number of ministers in a state shall not be less than twelve;\textsuperscript{73}

(ii) provides that a member of either House of Parliament or of a State Legislature belonging to any political party who is

\textsuperscript{72} Statement of Objects and Reasons to the Constitution (Ninety-first Amendment) Act, 2003
\textsuperscript{73} Section 3, The Constitution (Ninety-first Amendment) Act, 2003
disqualified under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed a minister or hold a remunerative political post for the duration of the period commencing from the date of disqualification till the date on which term of his office as such member expire or where he contests an election to either House of Parliament or Legislature of a State, before the expiry of such period till the date on which he declared elected, whichever is earlier;  

(iii) The Act omitted the provision regarding splits from the Tenth Schedule to the Constitution of India.

2.9. Review:

The menace of defections has not been new to the functioning of the Indian Parliamentary democracy. But the magnitude of unethical, unprincipled defection increased after the fourth General election, which poses a threat to the Indian democracy. Several State Government falls within a short period of time. Many people think that the evil of unethical defection should be curbed. On 8th December 1967 the Lok Sabha passed a resolution with a view to finding solution to the problem of defection and

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74 Section 4, The Constitution (Ninety-first Amendment) Act, 2003
75 Section 5, The Constitution (Ninety-first Amendment) Act, 2003
accordingly the Government of India appointed a committee under the
chairmanship of Y.B.Chavan to study the problem.

The Committee on defection submitted its report on 7th January 1969
and recommended that the problem of defection should be tackle
simultaneously on ethical, political, constitutional and legislative
measures. Regarding ethical measure, the Committee suggested to draw a
Code of Conduct for every Political Parties. Regarding Constitutional
measure, it suggested that a defector should not be allowed to become a
Prime Minister, Chief Minister or any minister, the size of the council of
minister should not be large, and the right of dissolution of the popular
House should be vested in the Council of Ministers and not in the Prime
Minister or to the Chief Minister.

Keeping in view the recommendations of the Committee on Defection,
the Constitution (Thirty-Second Amendment) Bill, 1973 was introduced in
the Lok Sabha on 16th May, 1973, seeking to amend Art. 102 and 191 of
the Constitution and to provide, inter alia, for disqualifying a Member
from the House on the ground of voluntarily giving up of the membership
of the political party or on his voting or abstaining from voting in such
House contrary to any direction issued by such political party. The Bill did
not include independent legislators within its purview. It was a very short
Bill, consisting of ten clauses but the Bill lapsed on account of dissolution
of Lok Sabha.
Considering the recommendation of the Election Commission of India and the recommendations of the Choudhary Charan Singh Committee, another Bill viz, the Constitution (Forty-Eight Amendment) Bill 1978 was introduced in the Lok Sabha on 28th August, 1978. But the Bill was opposed at the stage of introduction itself and it was withdrawn by leave of the House.

After seven years from the lapse of the second Bill, the Constitution (Fifty-Second Amendment) Act 1985 was passed and it incorporated Tenth Schedule to the Constitution of India providing disqualification on the ground of defection.

After a comparative examination of the Constitution (Thirty-Second Amendment) Bill 1973 and the Constitution (Forty-Eight Amendment) Bill 1978, it is found that both the Bills envisaged somewhat similar approach towards the problem of defection. Under the 1978 Bill, split cases were exempted and termed as ‘genuine split’ in a party. However, a split being defined as the breaking away of not less than 25% of the members of the party in the legislature and where a party has lesser than 20 legislators, the split may be affected by breaking away of not less than five members. Both the Bills left the independent members completely out of the purview of disqualification clause inserted in the proposed amendment Bills.
A comparison of the provisions of the Constitution (Thirty-Second Amendment) Bill 1973 and the Constitution (Forty-Eight Amendment) Bill 1978 on the one hand and the Constitution (Fifty-Second Amendment) Bill 1985 on the other hand would bring out the avowed and deliberate intent of Paragraph 7 of the Tenth Schedule. The Constitution (Thirty-Second Amendment) Bill 1973 and the Constitution (Forty-Eight Amendment) Bill 1978 contained similar provisions for disqualification on the grounds of defection, but these two Bills did not contain any clause ousting the jurisdiction of the Courts. Again, determination of disputed disqualification on the ground of defection was left to the Election Commission as in the case of other disqualifications under the Articles 102 and 103 in the case of Member of Parliament and Article 191 and 192 in the case of members of Legislative Assembly of the States.