CHAPTER - 7

CONCLUSION AND SUGGESTIONS

The Anti-defection law was passed by the Parliament in the year 1985. Thereafter almost thirty-two years have elapsed, but the law fails to curb the evil of political defection as to its desired extent due to certain inbuilt loopholes in the law. The main intent of the law was to combat “the evil of political defections.” The Tenth Schedule provides for the disqualification of the members of Parliament and the State Legislatures on the ground of defection from one political party to another. The scope, object and constitutional validity of the Tenth Schedule were examined in detail in \textit{Kihoto Hollohon Vs Zachilhu}\textsuperscript{470}, case. The object is to preserve the democratic structure of the Legislature and to safeguard political morality of the legislators.

This schedule contains 8 paragraphs- the first sets out the definitions; the second paragraph states the grounds of disqualifications; third paragraph is about splits within the party (deleted in the year 2003), the fourth paragraph provides for exemption in which it is stated that disqualification does not apply in case of mergers. The fifth paragraph sets out exemptions in which the Speaker, Deputy Speaker, Chairman and Deputy Chairman of a House are allowed to give up their membership of

\textsuperscript{470}Supra Note 78
their concern party after being elected to that Office; the paragraph six names the persons who would decide disputes under the Schedule; paragraph seven bars the jurisdiction of the courts regarding the alleged question of disqualification of any member and the last paragraph 8 empowers the Speaker/the Chairman to make rules for a House in order to implement the provisions of Tenth Schedule.

Provisions of the Tenth Schedule has come before the Hon’ble Apex Court and in various High Court again and again for its interpretation and in exercise of its power of judicial review, the various High Court as well as Apex Court have discussed and gave wide interpretation to the meaning of various provisions of the Tenth Schedule of the Constitution.

A. Findings of the Study

The Anti-defection law was expected to put an end to the evil of unprincipled political defections. But right from the time of its enactment, the Anti-defection law was subjected to severe criticism and many loopholes were pointed out. The present Researcher has identified the following issues from the discussion made in the previous chapters.

I. Voluntarily giving up membership

When an individual member voluntarily gives up the membership of his political party, he is subject to disqualification under paragraph 2(1)
(a). But under the provisions of Tenth Schedule the phrase ‘voluntarily giving up his membership’ is not comprehensively defined and it creates lots of confusion regarding application of the Act. No provision in the Tenth Schedule requires that the act of voluntarily giving up membership of the party must be expressed or performed in any particular manner, formal or otherwise. A member can voluntarily give up his membership in a variety of ways. He may formally tender his resignation in writing to his political party or he may so conduct himself so that the necessary inference can be drawn that he has voluntarily given up his membership of the party to which he belonged. A pertinent question has arisen as to what type of conduct would amount to ‘voluntarily given up his membership’?

The Judicial Interpretation is that “voluntarily giving up membership” is not similar to the word “resignation” and has a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that Party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs. Even the Court also allowed the Speaker to make such assumption based on photographs published in newspapers and statements made by members. There have been cases thereafter where the Speaker of Lok Sabha disqualified a member of the Bahujan Samajwadi Party based
on newspaper reports that he had encouraged people to vote for the Samajwadi Party in a public meeting of the Samajwadi Party.

The Speaker, in *Kunwar Pranav Singh Champion & Ors vs The Speaker, Legislative Assembly & Ors*,\(^{471}\) had disqualified the petitioners on three important grounds, viz., the petitioners travelled in a same bus with the Leaders of Opposition Party; they travelled in a same flight with the opposition members and they submitted a joint memorandum to the Governor. The speaker issued notice to the petitioners regarding sloganeering within the House.

Giving a joint memorandum may be an act or conduct of the petitioners from which an inference can be drawn that the petitioner has voluntarily given up the membership of the Congress party. But the conduct of the petitioners – sloganeering in the House and travelling in a same bus or travelling in a same flight on which opposition members were also travelling, cannot be said as ‘voluntarily giving up membership of the party’. Again the criticism of the Chief Minister’s method of functioning and the Speaker’s partisan conduct is not amounting to ‘voluntarily giving up membership of the party’.

A mere expression of dissent by certain members to the candidates contesting in the Rajya Sabha election can in no circumstance be a

\(^{471}\)Supra note 118
conduct showing voluntary surrender of the membership of the party. These members were not supportive of the two out of three candidates fielded by the party on the ground that, the name of these two candidates were not approved by the Parliamentary Board of the party. These members of the House have never deserted the party nor their conduct in any manner shows surrender of their membership and hence their act does not fall within the expression of ‘voluntarily giving up membership of the party’.

In deciding the question as to whether an independent member voluntarily surrendered their membership and joined a political party, materials available and also the conduct of the member has to be examined by the Speaker of the House. A mere expression of outside support would not lead to an assumption that a member has joined a political party. It is a very difficult task for the Speaker to draw an inference from the act and conduct of an independent member that he has extended only outside support or in fact, has joined a political party.

The act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected.
But the act of asking the Governor to replace one Chief Minister by another does not amount to voluntary relinquishment of the membership of the party. It is found that when certain members of the government had expressed their dissatisfaction with functioning of the Chief Minister and revolted against him, the Speaker of the House disqualified them on the ground of voluntarily giving up of their membership. Does it amount to ‘voluntarily given up his membership’ of the political party that sets him up as a candidate in the election? If the members who have declared their withdrawal of support and cast vote against the government when the motion of confidence has come up, they would clearly incur the disqualification under paragraph 2(1)(b) of the Tenth Schedule.

II. Votes or abstain from voting in the House contrary to any direction

A member of the House can be disqualified if he votes or abstains from voting against any direction given by the political party to which he belongs. Though an inference of the word ‘whip’ is found in paragraph 2(1)(b) of Schedule Tenth to the Constitution of India but the word ‘Whip’ is nowhere defined in any Article of the Constitution of India or in the Rules of Procedure of the House. After the passing of the Constitution (Fifty-second Amendment) Act, 1985, which incorporated Schedule Tenth
to the Constitution of India, the word ‘whip’ has assumed a very important role in our parliamentary system of democracy.

The word “any direction” used in paragraph 2 (1) (b) gives wide discretionary power in the hands of the leader of the political party. In a democratic set up like India each legislator is free to exercise his right of franchise. Any direction issued by the leader of the political party or by any authority to vote for a particular candidate or to vote for a particular policy would not only mean influencing such right but would also amount to a corrupt practice. It curbs the legislators’ freedom of opposing the wrong policies which is not suitable to his constituencies. It also prevents a member from opposing bad leaders and anti-people Bills proposed by the so called “High Command” in arbitrary and undemocratic manner.

The Anti-defection law curtails the freedom of speech and expression of a legislator. The law mandates that all members must vote strictly on party lines, and in complete obedience with the party direction. By doing so, it takes away the right of a legislator to vote according to his conscience. The law further restricts voicing dissent against his party's positions and policies, except through intra-party debate. Once a whip is issued by the ruling party in such a House, there can be no dissent or disapproval voiced by any of the members of the party having a majority. This may have a deleterious impact on government accountability.
The using of the words “any direction” in paragraph 2(1)(b) gives additional dictatorial power to the leader of the political party which is against the principles of parliamentary democracy. If the expression ‘any direction’ literally interpreted then it includes each and every direction or whip of any kind whatsoever it might be unduly restrictive of the freedom of speech and the right of dissent.

Regarding the interpretation of the expression “any direction” occurring in paragraph 2(1) (b), the research scholar begs to submit that if the expression “any direction” is literally construed then it would make the people’s representative a wholly political party’s representative, and the member would lose his identity and would become a rubber stamp in the hands of his political party. Such interpretation would become destructive of parliamentary democracy, which is the basic feature of the Constitution.

While construing Paragraph 2 (1) (b) it cannot be ignored that under the Constitution members of Parliament and the State Legislature enjoy freedom of speech in the House though it is subject to the provisions of the Constitution and the rules, and regulation of the concerned House. The disqualification imposed by Paragraph 2(1)(b) must be so construed as not to unduly impinge on the freedom of speech of a member, which would be possible if the paragraph is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule,
namely, to curb the evil or mischief of political defections. *Kihoto Hollohon vs. Zachillhu*. 472

Keeping in view the consequences of the disqualification i.e., termination of the membership of a House it would be appropriate that the direction or whip which results in such disqualification under Para. 2(1) (b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Para. 2(1) (b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction. *Kihoto Hollohon vs. Zachillhu* 473

A direction given by a political party to its members, violation of which may entail disqualification under paragraph 2(1)(b) should be limited to a vote of motion of confidence or no confidence in the Govt. or where the motion under consideration relates to any financial or money Bill.

Another important question to consider is whether the law has been successful in curtailing political defections in India. Whips have been regularly disobeyed both at the centre and States when it is issued for important votes and issues affecting government stability. For example,

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472 Supra Note 78  
473 Ibid
recently in Uttarakhand 9 MLAs of the ruling Congress party took the side of the opposition BJP in demanding a counting of votes on an Appropriation Bill that could have potentially led to the downfall of the Congress government. Similarly, about 20 rebel MLAs from the ruling Congress party in Arunachal Pradesh submitted a letter to the Governor expressing their lack of confidence in their own government in October 2015. Subsequently, 14 of them were disqualified by the Speaker on grounds of defection.

In the last Assembly election of Goa and Manipur, no party get majority to form a government. Though in both the States Congress was the single largest party, but failed to form Government. In Goa, two Congress legislators Viswajit Rane and Savio Rodrigues refused to vote against the trust motion defying the party whip and resigned the membership of the assembly. In Manipur, Congress legislator Thounaojam Shyam Kumar defected from the Indian National Congress party to joined BJP.\(^{474}\).

Even at the union during the confidence vote in July 2008, 21 Members of Parliament, both from the ruling and opposition side, disobeyed the whips issued by their respective parties. Therefore, one may argue that the Anti-defection law has not been able to deal with the issue of defections and political stability. But the frequent issuance of whips by

\(^{474}\) The Assam Tribune, 17\(^{th}\) March, 2017, Guwahati.
the leader of the political party marginalises political debates. In light of this, one needs to question the use of continuing with the provision that a member shall be disqualified if he votes or abstain from voting for violating party directions.

International practice is also telling in this regard. Currently among the 40 countries that have an Anti-defection law, there is no major country from North America or Europe. More importantly, of these 40 countries, only six have a law that mandates legislators to vote according to party direction or party whip. The remaining countries only disqualify legislators if they are found to resign from their party or be expelled from it. The six countries that prevent legislators to vote according to their will and conscience are India, Pakistan, Bangladesh, Guyana, Sierra Leone and Zimbabwe.\(^{475}\)

III. Power of Speakers or Chairman as a deciding Authority

Under the Tenth Schedule, the Speaker/Chairman is invested with adjudicatory power to resolve disputes arising under the said schedule. Only the Speaker/Chairman have the power to decide as to whether or not a legislator has defected from a party. But the question of the Speaker’s position as Tribunal or more precisely on the question as to whether the Speaker meets necessary attributes of a impartial judicial tribunal, the

\(^{475}\) Anviti Chaturvedi “Debating Anti-defection Law” PRS Legislative Research.
initial doubts and criticism still persist more so in view of the conduct of some of the Speakers in recent times.

With due respect to the high office of the Speaker in the country and only after going through some of the events of the recent past, various questions have been raised about impartiality and neutrality of the Speaker in his capacity as a Tribunal under the Tenth Schedule to the Constitution of India. The Speakers are seen acting in a partisan manner which is very often reflected in their functioning as a tribunal, for instance in Arunachal Pradesh, Uttarakhand and in Karnataka.

The decision of the Speaker in the matter of disqualification on the ground of defection had been challenged in various cases for being biased and partial. In Mayawati vs. Markandeya Chand and Ors\(^{476}\) the Speaker’s decision was challenged as being perverse because the Speaker unduly delayed the proceeding under the disqualification petition. In D. Sudhakar vs. DN Jeevaraju and Ors\(^{477}\) the impugned order of the Speaker was held to be vitiated by mala fides because the disqualification petition was decided by him in haste and it revealed a partisan attitude in his approach. In B.S. Yeddyurappa case\(^{478}\) the Speaker acted in ‘hot haste’ and in violation of the principles of natural justice while disposing off the disqualification petition, even though there was no conceivable reason for

\(^{476}\) Supra Note 89
\(^{477}\) Supra Note 139
\(^{478}\) Supra Note 263
the Speaker of the Karnataka Legislative Assembly to have taken up the matter in such hurry.

The irresponsible manner in which some of the Speakers and Governors exercised their powers brought disgrace to their high offices and sometimes led to the brink of open confrontation with the judiciary to cite an example of Manipur and in Arunachal Pradesh.

Former Lok Sabha Speaker Somnath Chateercjee observed that the jurisdiction and authority to deal with matters of defection as provided in the Tenth Schedule need not continue to be exercised by the Presiding Officers and the power should be conferred on some other authority like a special Tribunal comprised of people well versed in law or on an authority like the Election Commission.

Even if we look into the historical background of the Anti-Defection Law it is found that it is the Constitution (52nd Amendment) Act 1985 that conferred the decision making power on the question of defection on the Speaker/Chairman of the House but under the previous bill it was vested with the Election Commission.

The Speaker in the Indian context is the nominee of political parties who are not required to resign their party affiliation after election. Speakers being political personalities and being nominees of political
parties do not meet the requirements of an independent judicial tribunal and cannot function impartially.

The majority in *Kihoto Holohan case* rejected this argument on the “high office principle” i.e. it is expected that persons holding such high office, being vested with the power of adjudication, would act fairly and judiciously. But the minority view in *Kihoto Holohan case* was that the Speaker is not an independent adjudicatory authority for adjudicating disputes as contemplated under the Tenth Schedule and therefore the investiture of such adjudicatory power in the Speakers is violative of a basic feature of the Constitution. The Speaker is an authority within the House and his tenure is dependent on the will of the majority therein, and therefore likelihood of suspicion of bias could not be ruled out.

There is sufficient force in the reasoning given by the minority in *Kihoto Holohan case* that investiture of the power of adjudication in the Speaker is violative of the Principle of natural Justice and the Speakers being political personalities cannot be expected to discharge the duties and functions of judicial tribunal.

From the discussion of previous chapters it is found that though the law is settled by the judiciary that the Speaker has no power of review of

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479 Supra Note 78
480 Ibid
481 Ibid
his own order under the Tenth Schedule, and an order of disqualification made by him under paragraph 6 is liable to be corrected only by judicial review, still certain Speakers or Deputy Speakers exercise such power of review.

Therefore, the research scholar begs to submit that, time has come for Parliament to think for an alternative adjudicatory authority to decide question of disqualification on the ground of defection under the Tenth Schedule.

**IV. Provision relating to mergers**

While paragraph 3 with the exception on split has been deleted by the Constitution (Ninety-first Amendment)Act, 2003, another exception to disqualification on the ground of defection exists in the case of merger of a political party with another political party, as provided under paragraph 4 of the Tenth Schedule. A party shall be deemed to have merged with another political party if not less than two-thirds of the members of the legislature party concerned have agreed to such merger. If any such merger takes place, those who do not agree to such merger and opt to function as a separate group in the House are also exempted from disqualification.

The Tenth Schedule while prohibits individual defection but at the same time it allows group defections in the name of merger. The game of merger is more easily played in smaller states like Meghalaya, Manipur,
Nagaland, Goa, and Mizoram. All these states have witnessed the bizarre drama of defections involving a minimum of two-third or more of the party members defecting to the opposition in order to topple the popular government for self-serving ends.

In 2015, all the 8 Congress legislators of Nagaland have joined the ruling Naga People’s Front (NPF) with Assembly Speaker Chotisuh Sazo accepting their merger with the regional party and ultimately Congress no longer exists in the State Assembly. It is nothing but betrayal of electorate, who cast vote in favour of Congress party in the election.

The principle that group defections is as bad as individual defection or that a crime is a crime whether it is committed by one person or by a group of persons, has not been accepted fully. A group can still get away with it only if its size is bigger, viz, two-third instead of one third of the strength of the party in House. It is clear that all defections are bad and we need an unambiguous provision in our constitution without any provisos and exceptions for curbing any kind of defection.

V. **Expulsion and Status of unattached member**

The anti-defection law is silent in respect of the position and status of members who are expelled from their political parties. Such a member, however, continues to be a member of the House and sits separately from the bloc of seats earmarked for his original political party. Expelling a
member from a political party and disqualification from membership of the concerned House are two different matters. A member of a political party may be expelled because of anti-party activities or for an act of dissent committed by such member under the party disciplinary rules or code of conduct of such party. Under the Tenth Schedule the question of disqualification on the ground of defection arises only on two situations—voluntarily given up his membership and voting or abstains from voting against the party direction. Now question arise as to whether expulsion from political party can be the basis for disqualification from membership of the House. Whether the party whip lies against such expelled members? What shall be the status of such expelled members?

In this regards the view of Apex Court is that an expelled member is bound by the party’s whip even after expulsion and failure to adhere to such whip would result in disqualification of the expelled member from the House. G. Viswanathan Vs Speaker T.N. Legislative Assembly\(^ {482}\), The prime question – can anti-defection law be invoked only against those who either defect from their party or defy its whip while still in the party and will it be applicable to someone who has been expelled from the party again came into consideration before the Apex Court when Amar Singh and Jaya Prada were expelled from the Samajwadi Party. In Amar Singh Vs

\(^ {482}\)Supra Note 94
Union of India\textsuperscript{483} and Vinod Kumar Binny Vs. Speaker, Delhi Legislative Assembly\textsuperscript{484}, though the Court initially held that, the decision of the G.Viswanathan case\textsuperscript{485} shall not be applied to their case but subsequently the larger Bench of the Apex Court of India refused to reconsider the law laid down in G. Viswanathan case\textsuperscript{486} and the decision of G. Viswanathan case\textsuperscript{487} remains prevailed. However, this approach of the Apex Court kept an area of Tenth Schedule vague and dark. In view of the present scenario the present research scholar begs to state that it is a time to probe into the questions raised in Amar Singh case.

VI. Dissent and defection

The Anti-defection Law has been criticized on the ground that it denies the fundamental freedom of speech and freedom of action, which includes the freedom to vote of a legislator because he is required to abide by the direction. Under the present Anti-defection law, a legislator can exercise his dissent only in two situations – if the member takes prior permission from his party, or if the conduct and action is condoned by the party within 15 days from the voting. In such cases, he will not be considered a defector. Otherwise, their dissent may be termed as defection and they may be disqualified from membership of the concerned House.

\textsuperscript{483} Supra Note 106
\textsuperscript{484} Supra Note 107
\textsuperscript{485} Supra Note 94
\textsuperscript{486} Ibid
\textsuperscript{487} Ibid
under the Tenth Schedule, as in the case of Arunachal Pradesh and Karnataka. Dissent should not be considered as defection because a dissenting member or one who does not comply with a particular party directive has neither changed sides, nor crossed the floor; he continues to be a member of his party. Therefore, a difference needs to be made in between ‘defection’ and ‘dissent’, every dissent does not amount to defection.

Mere non-compliance with a party directive can never be considered to be political defection because such a member has neither changed sides nor crossed the floor; he continues to remain a member of his original political party.\footnote{Supra Note 2 Pg. 9}

Defection means abandonment of the party to which he belongs or an act of confirming disloyalty to that party or a positive act to join another party, or a change in party allegiance. The honest ‘dissent’ is an integral part of a vibrant democracy and is not the same as ‘defection’. There is a very thin line separating an act of ‘defection’ with an act of ‘dissent’. Whereas all cases of defection would be inclusive of acts of dissent either backed by lure for office or for other considerations which strictly may not be called ‘moral’ but the converse is not always true and all cases of ‘dissent’ do not necessarily fall within the meaning of the term ‘defection’.

\footnote{Supra Note 2 Pg. 9}
Defection under Paragraph 2(1)(a) of the Tenth Schedule of the Constitution constitutes of deserting of the party. Dissent is not defection and the Tenth Schedule while permits dissent prohibits defection. Dissent is permissible only so long as it does not tread into the realm of ‘voluntarily relinquishing the membership of the party’. If dissent is permitted to unfathomable limit, then it will amount to deserting the party and would also tantamount to ‘voluntarily giving up his membership of such political party’ under paragraph 2(1)(a) of the Tenth Schedule. *Kunwar Pranav Singh Champion Vs Speaker, Uttarakhand Legislative Assembly*\(^{489}\)

A Parliamentary form of Government can be effective only if individual Legislator has a significant role as law maker and he can be held accountable for his actions/ non-actions. But under the present scenario only the leaders of a political party (Party Bosses) play the significant role and role of an individual Legislator is diminished to just a person who has to follow orders from the party bosses. Any legislator who does not act in accordance with the party direction on any issue may be disqualified from the membership of the legislature. For instance, in 2008 during the confidence motion, 10 MPs were disqualified from the membership of the Parliament when they did not vote as per the direction given by the party leader. The leader of a political party can ensure the support of each of its legislator by issuing a whip.

\(^{489}\)Supra Note 118
Though a sound party system is essential for the stability of parliamentary democracy or a parliamentary form of Government it is equally important to preserve the right of dissent, because in a democracy all problems are required to be decided within the four corner of the House by active participation of its member through the process of discussion, debate, voting and adjustment of views. It is seen that, members belonging to the same political party may sometime have different opinions on a matter and expression of such difference of opinion may result in modification or withdrawal of proposals under consideration. Such a result is possible only if members are allowed to express their dissent without the fear of disqualification from the House. It is criticised that, this right of dissent is essential in a democracy and any anti-defection law which does not take into account the right of conscious dissent would not only be unconstitutional but would also be unethical and have no place in a democratic set up. - Mian Bashir Ahmad and etc Vs State of Jammu & Kashmir and Ors⁴⁹⁰.

The right of freedom of speech conferred on a member of the Parliament is not an absolute one. It has been made subject to the provisions of the Constitution and can be regulated or curtailed by making any constitutional provision like the Fifty Second Amendment Act. But the disqualification imposed by Paragraph 2(1) (b) must be so construed as not

⁴⁹⁰Supra Note 61
to unduly impinge on the freedom of speech of a member. The excessive and ineffectual interpretation of Paragraph 2 (1) (b) by the Apex Court has lead to a frequent use of whips by the leaders of the political party in trivial matter in everyday parliamentary politics.

The frustration against the inability to dissent on the floor of the House prompted Manish Tewari, spokesperson of the Congress to initiate a Private Member’s Bill in the Parliament.\textsuperscript{491} The Bill has suggested for the use of whip only in case of motion of confidence, motion of no confidence and in case of money Bill.

The researcher sought to maintain a balance between the intended freedom to vote and dissent, and the associational rights vested in political parties. Any restriction on voting in Schedule Ten must be done away with, in the interests of greater and livelier debate in the House, which could lead to better formulated legislations. At the same time, it must be remembered that Schedule Ten serves to protect the sanctity of a political formulation as well as the life of a government.

\textbf{VII. Provision relating to Independent and Nominated member}

The Anti-defection Law has been criticised on the ground that it creates an unreasonable discrimination between the elected independent member and a nominated member of a House. Under the Tenth Schedule an
independent member will be disqualified if he joins any political party after his election. But a nominated member shall not be disqualified if he joins any political party within a period of six month. A nominated member is allowed to join any political party within six months of his nomination. An independent member’s freedom to join any party is fettered although he is master of himself and owes his election to no political party. On the contrary, the ruling party picks up and chooses person for nomination and in a way puts them under obligation. Such members are, therefore, likely to join the ruling party.

Independent elected member are allowed to give outside support to any government and it is not the same thing as joining any political party after his election. Again in *D. Sudhakar & Ors Vs. Jeevanraju & Ors* the Hon’ble Apex Court held that even independent candidates, can extend support to a government formed by a political party and can become a Minister in such government.

The Department-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its Sixty-first Report on Electoral Reforms-Code of Conduct for Political Parties & Anti-defection Law, presented to the Rajya Sabha on 26th August, 2013 and laid on the table of Lok Sabha on 26th August, 2013 express their dissatisfaction on the Tenth Schedule and suggests for revision of existing provisions of the

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492 Supra Note 139
Tenth Schedule of the Constitution so as to enable independent members to join a political parties in the same manner as in the cases of nominated members.

**VIII. Definition of Political Party**

Paragraph 1 of the Tenth Schedule suffers from a serious lacuna inasmuch as it defines the term “House”, “Legislature Party” and “Original Political Party” but fails to define a “Political Party” although the term is used in paragraph 2 of the Schedule. The judicial stand point is that a ‘Political party’ in clause (b) of sub-paragraph (1) of paragraph 2 is none other than “Original political party” mentioned in paragraph 3.

Generally speaking, a political party is an unincorporated voluntary association of a number of persons, more or less numerous, sponsoring ideas of government or maintaining certain political principles or ideologies or beliefs in public policies of the government, having a political organisation.

**IX. Rights of Electorates**

Presently the voters have no right to file petition under the Tenth Schedule for disqualification of a Member of Parliament or State Legislature on the ground of defection. Similarly, under the Representation of People’s Act 1951 voter does not have a right to recall their duly elected representative. In this regard, the Private Member Bill
moved by BJP MP Shri Varun Gandhi may be mentioned. By introducing
Private Member Bill Shri Varun Gandhi sought an amendment to Representation of People’s Act for insertion of a provision to recall parliamentarians for non-performance. The Representation of the People’s (Amendment) Bill, 2016 proposed that the process to recall the elected representatives can be triggered by a voter. They would need to file a petition with the Speaker of the House, signed by other voters in the constituency. It provides the electorate the power to remove the elected representatives who fail to perform their role in a satisfactory manner and who grossly neglect their duties.

According to the Bill, MPs and MLAs can be recalled within two years of their election, if 75% of the voters in their constituency are dissatisfied with their performance. After the petition is filed and authenticated, the Election Commission would have to verify the signatures on the petition. If a majority of the voters (three-fourth, according to PTI) vote to recall the legislator, the Speaker or EC would then have to have the seat vacated by the removing the sitting MP or MLA. The present researcher would like to suggest that in case of defection of MP or MLA the voter should have right to recall them. This is because the voters choose their representative on the basis of their political ideology. When the MP /MLA change his

493 The private member Bill moved by Varun Gandhi in the Lok Sabha, available at www.google.com, last visited on 23.04.2017
political ideology by defecting from party which set him up as candidate in the election the voters should have a right to recall him.

B. Suggestions:

After considering the above study the present researcher begs to submit the following suggestions.....

1. Adjudicatory Power under Tenth Schedule

The adjudicatory power under Tenth Schedule should be done away from the Speaker or Chairman of the concerned House. The power to decide alleged question of disqualification on the ground of defection under the Tenth Schedule of the Constitution of India should be vested on the Election Commission of India in case of Parliament and on the Election Commission of the concerned States in case of State Legislature.

2. Definition of words “voluntarily giving up membership of a political party

The words voluntarily giving up membership of a political party must be comprehensively defined.

3. Issuance of Whip or Direction under Tenth Schedule should be limited.

Disqualification on the ground of defection should be limited to the cases where (a) a member voluntarily gives up the membership of his
political party, (b) if he votes or abstains from voting in the House contrary to any direction of his political party with regard to a Confidence motion, No-confidence motion, Adjournment Motion, Money Bill or Financial matters, and in no other cases. It will reduce the infringement of legislators’ freedom to vote.

4. **The term ‘Political Party’ should be specifically defined**

   Though the term “Political Party” is used in the Tenth Schedule but it has not been defined in the Schedule. Therefore it is suggested that the term “political party” should be clearly defined.

5. **Position of expelled members.**

   Position and status of members who have been expelled by the political party should be explained in the Tenth Schedule and restrictions like prohibition on joining another party or holding offices in the government are to be imposed on expelled members.

6. **Provision relating to Merger**

   The provisions relating to merger which exempt disqualification on the ground of defection should be deleted from the Tenth Schedule.

7. **Voters right**

   The voter should have a right to file petition under the Tenth Schedule for disqualification of a Member of Parliament or State Legislature on the ground of defection.
8. **Value of vote cast by defector**

   The vote cast by a defector to topple a government should be treated as invalid.

9. **Pre-poll Alliance of political Parties**

   Pre-poll Alliance of political Parties should be treated as a single political party under the Tenth Schedule. The Anti-defection law should be applied to the political parties who formed alliances before the election. The rationale that a representative is elected on the basis of the party’s programme can be extended to pre-poll alliances. The Law Commission has also proposed this change with the condition that partners of such alliances inform the Election Commission before the elections.

10. **Specific time limit for decision**

    The Tenth Schedule should be amended and provision should be made that any disqualification petition filed under the Tenth Schedule on the ground of defection should be heard and decided within a period of not more than three months.

11. **Anti-Defection Law applied to the Autonomous District Council**

    The provisions of Anti-defection law should be made applicable to the Autonomous District Council of North Eastern Region.