PREFACE

In a democratic country like India Government is usually formed by the elected members of political party which obtains majority vote in election. But very often it is seen that defection defeats the mandate of the electorate. The process of unethical and unprincipled defection not only undermines the principles of democracy but also defeats the public confidence in democracy. It is with a view to fight with this problem, the Tenth schedule of Constitution has been introduced in India by the Constitution (Fifty-Second) Amendment Act 1985. But the law is not free from lacuna. Even the introduction of anti-defection law cannot prevent the members of the political party from defection to the desired level.

The Anti-defection provisions contained in the Tenth Schedule of the Constitution of India basically aimed at establishment of a stable government. Subsequent working of the Anti-defection law has revealed that the law fails to meet with its objectives and therefore fails to maintain the true spirit of democracy because of several inherent lacunae in the law itself.

The main aims and objectives of the researcher to conduct research on this topic is to find out, whether the law has been effective enough in checking defections and also whether there have been built-in loopholes in the law that have neutralised the positive effects of the law. For this purpose the researcher has made an effort to ascertain and clarify the provisions relating to defection under the Constitution of India and to evaluate the various Judicial Pronouncements on the
Tenth Schedule to study the consequence and effect of defection in Indian parliamentary democracy.

Regarding the organization and for convenience of study and discussion, the research work has been divided into seven Chapters. The First chapter deals with introduction, where the investigator has discussed aims and objects of Anti Defection Law, the concept of defection, evolution of the Anti Defection law in India, the rationale behind the Law and its scope and extent. In the last part of this chapter the Anti-defection law of Jammu and Kashmir and Anti-defection law prevailing in other countries have been discussed.

Second chapter deals with historical background of anti-defection law in India and in this chapter the researcher has made an effort to give emphasis on historical perspective of Anti defection law by analysing the recommendation of Committee on defection, the Constitution (Thirty-second Amendment) Bill 1973, the Constitution (Forty-eight Amendment) Bill 1978, and the Constitution (Fifty-second Amendment) Act 1985.

In the third chapter ‘Constitutional Provisions Relating to Anti Defection Law an Analysis’, the researcher discuss the provisions of the Tenth Schedule and its object and scope, constitutionality of Tenth Schedule, ground of disqualification, issuance of ‘whip/ any Direction’, scope and extent of split and merger, ‘position of independent and nominated member’s, status and position of expelled and unattached member have been discussed. In the last part of this
chapter Report of the various Reform Committee/Commission constituted for removal of lacuna in the Anti-Defection law has been discussed.

In the fourth chapter namely ‘Role of Speaker under Tenth Schedule’, the researcher has analysed the position of Speaker/Chairman, decision making power of the Speaker and its scope, Speaker’s power of review and review of Speaker’s order by the High Court or Supreme Court. The decision of various Lok Sabha Speakers as well as the various State Assemblies’ Speakers which created inconsistency between them and confrontation between Speaker and court has also been discussed. In the last part of this chapter, a criticism has been given against the imposition of adjudicatory power upon the presiding officers of the House on the ground that it fails to satisfy the requirement of independent adjudicatory authority.

In fifth chapter, “Anti defection Law vis-a-vis right to freedom of speech and expression”, the researcher has made an attempt to discuss the freedom of speech and expression of the member of the House under the Constitution of India and impact of Anti defection law on such right. The ground of disqualification - voting or abstain from voting contrary to ‘any direction’, ‘Whip’ and consequences of its violation, right to dissent, dissent or defection has also been discussed in this chapter.

The Chapter Six is on ‘Judicial decision on Anti-Defection law.’ In this chapter the investigator has examined the judicial stand point on the Tenth Schedule and analyzed the various judicial pronouncement of the Hon’ble Supreme Court of
India and various other High Courts to ascertain and clarify the provisions relating to Anti defection law under the constitution. This chapter will help jurist, lawyer and students in understanding the concept and law relating to Anti defection. Here working of the Anti-defection Law has been discussed by analysing the recent cases of defection and its shortcomings.

Chapter Seven is relating to the conclusion and suggestion arrived at as a result of discussion in the previous chapters. In this last chapter of research work, an appraisal of whole study is given. At the end of the research work the investigator would like to give some suggestions which may be considered for the removal of the lacunae in the present Anti-Defection laws.

In this study the investigator proposes to use both doctrinal and non-doctrinal method of research. In this study, the researcher has collected information of data through primary as well as secondary sources like books, websites, articles, journals, judgments, and internet sources. However, wherever feasible data has been supplied to make the study real and effective. The authorities, both Indian and foreign have been relied upon and used as source material. The source materials have been recorded in Bibliography which may be used by inquisitive reader for further study.

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