CHAPTER-1

INTRODUCTION

1.1 Meaning and definition of defection

The Tenth Schedule to the Constitution of India, which is popularly known as the “Anti-defection Law” was inserted by the Constitution (Fifty-second) Amendment Act 1985. There is no specific definition of the word defection in the Tenth Schedule but Clause (a) and (b) of Para 2 (1) of the said Schedule specify the act of defection which would attract the disqualification for the purpose of the Schedule. The term defection has been derived, as the dictionary meaning suggests, from the Latin word “defectio” which means an act of abandonment of a person or a cause to which such person is bound by reason of allegiance or duty, or to which he has wilfully attached himself.¹ Defection may be defined as abandonment of loyalty, duty or principle, or of one’s leader or cause. In parliamentary political life the term has come to connote change of party affiliation or allegiance by the member of a legislature.² The traditional term for the latter has, however, been floor-crossing which had its origin in the British House of Commons where a legislator was supposed to

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have changed his party allegiance when he crossed the floor and moved from the Government to the Opposition side or vice versa. In short, defection is an act by a member of a particular party of disowning his loyalty towards that particular party and pleading allegiance to another party. This is what the Law Lexicon describes as ‘crossing the floor’. Prof. Madhu Dandavate defines defection as follows-

“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 or of legislative assembly or Legislative Council of a state 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.”

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 eradicate the evil of defection, the Tenth Schedule to the Constitution of India was inserted by the Constitution (Fifty-second) Amendment Act 1985. The Anti-defection provisions contained in the Tenth Schedule basically aimed at

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3(1985) Lok Sabha Debate (January 30 1985)
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. No doubt, the anti-defection law has been introduced with a view to eradicate the politics of defection, but the law fails to check the menace of defection as to its desired extent due to certain in build loopholes in the law.

Defection is not only anti-democratic but even a form of corruption for its underlying motivation is personal gain and not any conscientious change of heart on the part of defecting legislator. During election, people vote for a particular candidate on the basis of the party he belongs to at the time of his election. If legislator seeks to change his political affiliation after election, he must resign his membership of the legislature and must seek fresh endorsement by the voters on the basis of his newly chosen platform.

The Evil of defection is not confined to India only, it is found in other countries having parliamentary form of government. Indian politics had seen defections right from the pre-independence Central Legislative Assembly and Provincial Autonomy days. Though the evil of crossing the floor or politics of defection had started much earlier, as early as 1937 but the magnitude of defection increased after the fourth general election. What is new to the Indian defections is that they have been phenomenal,
unprincipled, and opportunistic and at one point of time it posed a serious threat to the Indian parliamentary democracy.\textsuperscript{4}

The history of virulent politics of defections relates to the 1967 General Elections, which initiated the dual era of short lived coalition governments and politics of defection. Before the 1967 General Election, the Congress had enjoyed the luxuries \( \frac{2}{3} \) majority in the Lok Sabha and in most of the State Legislative Assembly and therefore, the scope for the politics of defection was not much. The period that followed this election is known one of the critical periods of the electoral history of India. In most of the States no single political party was in a position to form a government. This led to the emergence of Coalition or so called United Front government and politics of defection. The formation of such coalition governments was most often a marriage of convenience. They were constituted of heterogeneous elements – political parties coming together to share power often having no ideological similarity.

Frequent defections made a mockery of the party system and made the electoral system vulnerable to frequent and unnecessary elections which inevitably would cost a significant amount to the exchequer.

\textsuperscript{4}Paras Diwan “Aya Ram Gaya Ram : The Politics of Defection”, Vol.21, JLI, No. 3, July-September 1979
Defections revealed the inner state of party politics which was fraught with division, fragmentation and factionalism.\(^5\)

Defection causes Government instability, for a Government may be toppled over due to the defection of some of its supporters to the opposition party converting it from a minority into a majority party. So defection is undemocratic as it negates the electoral verdict. Several State Governments has fallen due to defection, because dissatisfied legislators who could not be accommodated as Ministers or other lucrative post defected from the party. A party which fails to get majority in the House through election may yet be able to manoeuvre a majority in the House and from the government by inducing defections from other parties. Thus, the party which may win a majority through election, and got the mandate from the people to form the government, may yet fail to do so because a few of its members defect from the party.

The Tenth Schedule contains provisions relating to disqualification of members of either House of Parliament or Legislative Assembly or Legislative Council of a State on the ground of defection. The Statement of object and Reasons accompanying the Constitution (Fifty-Second Amendment) Act, 1985 makes the object behind introduction of the Tenth Schedule to the Constitution clear as follows:

“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 principle which sustains it with this object, an assurance was given in the Address by the President to Parliament that the government intended to introduce in the current session of parliament an anti-defection Bill. The Bill is meant for outlawing defection and fulfilling the above assurance.”

The Constitution (Fifty-Second Amendment) Act, 1985 thus gave the much awaited birth to the anti-defection law as contained in the Tenth Schedule to the Constitution. However, hardly the illness of political defection could be cured to the desirable extent, though controlled to a large extent. Since the Constitution (Fifty-Second Amendment) Act, 1985 came into force there have been many more cases of defection from various parties in different State Legislatures. In spite of the Anti-defection Law, some of the governments, inter alia, in Nagaland, Mizoram, Andhra Pradesh, Tamil Nadu, Pondicherry, Manipur, Arunachal Pradesh, Goa, Gujarat, Meghalaya and Sikkim were brought down through defections. There were problems under Anti-defection Law in several other States as well as in Madhya Pradesh, Orissa, Maharashtra, Bihar, Karnataka, West Bengal, Delhi, Kerela, Uttar Pradesh, Punjab, Himachal Pradesh, Haryana and Rajasthan.

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6 The Statement of Object and Reasons accompanying the Constitution (Fifty-Second Amendment) Act, 1985
The Anti-defection law was expected to provide a stable government and put to an end to the evil of unprincipled defections, but the said law continued to be a subject matter of controversy since its inception – both before the judiciary and the legislature. It is alleged that the Tenth Schedule has barred individual defections but legalise group defections, the power of Speaker or Chairman to decide the question of disqualification, expulsion and status of unattached members etc.

1.2 Aims and Objective of the Study

The Anti-defection provisions contained in the Tenth Schedule of the Constitution of India basically aimed at ensuring stability and a sound base for the legislative bodies established under the constitutional set up. Subsequent working of the Anti-defection law as enacted suggests that the law really felt short of its objectives and maintain the true spirit of democracy because of several inherent lacunae in the law itself. The present research scholar in this research work has sought to study thoroughly the provisions of the Tenth schedule of the Constitution, and attempted to find out its loopholes and suggested remedial measures for amendment of the said law.

The main aims of the researcher to undertake the present study 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.

The main objectives of the conducting research on this topic are:

1. To ascertain and clarify the grounds of defection under the Constitution of India.
2. To ascertain and clarify the provisions relating to defection under the Constitution of India.
3. To evaluate the various judicial pronouncement on the Tenth Schedule.
4. To study the consequence and effect of defection in Indian parliamentary democracy.
5. To make an exploration in depth of the position of Anti-defection law in India.
6. To study the Anti-defection Law found in other countries.
7. To study the importance of Anti-defection Law in Indian democracy.
8. To study the historical background of Anti-defection Law in India.
9. To find out the impact of Anti-defection Law on the freedom of speech and expression of the legislator.
10. To find out the relation between coalition politics and defection in Indian democracy.
11. To examine the working of the present Anti-defection Law in India.
12. To find out the defects in the existing Anti-Defection law and suggesting reforms.

1.3 Research Problem

The events during the last three decades at the centre and various states reveal that the provisions of the Anti-defection Law have failed to eradicate the evil of defection. Over the years, strength and resilience of parliamentary democracy in India began to be eroded by the evil of unprincipled and unethical political defections leading to frequent changes of loyalty on the part of groups of legislators, change of governments and impositions of President’s rule in States.

The Anti-defection Law when it was passed, it had aimed at bringing down the unethical political defections but due to ever increasing political dishonesty and power hungry legislator this law failed to achieve its desired goals. Politicians found loopholes in this law and used it for their own personal benefit.

There are several issues in relation to the working of the existing Anti-Defection law which need to be discussed. The present researcher has identified the following main problem:

i. Voluntarily giving up membership of party,

ii. Voting in the House in violation of party ‘whip’ or ‘any direction’,

iii. The adjudicatory power of the Speaker or Chairman under the Tenth Schedule,
iv. Provision relating to merger – which allows group defection,

v. Expulsion and status of unattached members,

vi. Defection and dissent

1.4 Reason behind the enactment of Anti-defection Law in India

The evil of defection is not confined to India only. It is rampant, pertuating and flourishing in other countries having Parliamentary form of Government.⁷ Therefore, efforts have been made by various Parliaments to solve out the problem with the help of legislations. Generally speaking, the reason behind enacting an Anti-Defection law, providing for punitive measures against a member who defects from one party to another party after election, is that it is aimed at ensuring stability especially in a parliamentary form of government. The law on defection seeks to provide safety measures to protect both the government and the opposition from instability arising out of shifts of party allegiance.⁸

The main purpose of enacting the Anti-Defection law is to prevent the breach of faith of the electorate. Where a electorate of the constituency elects a candidate to the Legislature, it does so on consideration based on the ideologies of the political party he represents. Therefore, it is reasonable when the elected legislator after the election

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⁸ Supra Note.1, p.5
leaves the party or acts contrary to its policies, he should be disqualified for betrayal of the faith of the electorate.⁹

Over the years, strength and resilience of parliamentary democracy in India began to be eroded by the evil of unprincipled and unethical political defections leading to frequent changes of loyalty on the part of group of legislators, change of governments and impositions of President’s rule in states. Defection is not immoral or unwelcome if the “defection” or “floor crossing” is on the basis of ideological differences. But instances of such defection are getting rarer and rarer by the day. On the other hand, unethical defection i.e. defection for lure of office or for the spoils of office or for money has become the rule rather than the exception. It is to curb this menace, which has become the scourge of Indian political system and which has seriously afflicted our body polity, that the legislature has introduced the Tenth Schedule.

There are instances where governments have fallen due to defection from or split in a political party. For example, in Sri Lanka on two occasions, in 1964 and 2001, Government fell due to defection. Governments have also fallen elsewhere in the world, including in the United Kingdom where there is no Anti-defection Law, due to defection

or split in a political party.\textsuperscript{10} In India also even after the Anti-defection law comes into operation, Governments have fallen in various States due to political defections as in the case in Goa in 1989, in Sikkim in 1994 and in Arunachal Pradesh in 1999 and 2003. These examples are only illustrative and not exhaustive.\textsuperscript{11} In modern democracies, most of the members are elected to Parliament or to the State Legislature with substantial support and help from their parties and on the basis of their party manifesto. People cast their votes in favour of contesting candidates not only keeping in mind their personal qualities but also the policies and programmes of their parties. It is, therefore, argued that a successful candidate is bound by the pledges made by his party during the electioneering. He is expected to remain loyal to his party and abide by the party discipline. If he chooses to leave the party, he must lose his membership too.\textsuperscript{12}

On the other hand Anti-defection law has also been criticised on the grounds that it infringes the basic powers, privileges and immunities of members in exercising their freedom of speech and expression and freedom of action, which includes the freedom to vote. There is also a school of thought which holds the view that the Anti-defection laws prevents legislators from changing parties and it reduces the

\textsuperscript{11}Supra Note. 1, Pg.5
\textsuperscript{12} Ibid.
accountability of the government to the Parliament and ultimately to the people.\textsuperscript{13}

In a Parliamentary democracy, numbers are important, but democracy is much more than just a number game. Defection and counter defections from one party to another is a routine affair in India in which the only thing which guides the politicians is their lust for power. They migrated from one political party to another political party to fulfil their needs. The endless game of defections and toppling of governments is perhaps the most glaring example of the erosion of the democratic and moral values in the parliamentary life of India.

In such a situation no body denies the importance of a legislation which ensures stability of the elected government and has the effect of accountability of the legislator not only to the House but also to the electorate. The Anti-defection provisions contain in the Tenth Schedule provides stability to the government by preventing shifts of party allegiance. It ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies and promotes party discipline.

In spite of the laws made on defection, Indian democracy is not free from unethical political defections. A fresh debate is necessary on the efficacy of the law as at present. While everyone is agreed upon the need

\textsuperscript{13} Supra Note. I, Pg.5
to have such law, it is being agreed that the law as it has succeeded in preventing individual defection, but group defection have been encouraged because of the provisions that defection of two-third members of a party is not covered by the Act.

1.5 Anti-defection Legislation in Jammu and Kashmir

Many of the Indian Laws are not applicable in the territory of Jammu and Kashmir. This includes a crucial law i.e., Anti-defection law too. In Jammu and Kashmir even before the enactment of the constitution(fifty – second Amendment) Act in 1985, the Legislature of Jammu& Kashmir had passed a Bill Amending the Jammu and Kashmir Representation of the people Act,1957 with a view to disqualify a member from either house of Jammu and Kashmir state legislature on the ground of defection. The Bill passed by both house of the legislature become law with effect from 29th September 1979. The Act inter alia provided for disqualification of member in legislative Assembly /Council (a) if he, having been elected as such member, voluntarily gives up his membership of the political party by which he was set up as a candidate in such election or of which he becomes a member after election or (b) if he votes or abstain from voting in such house contrary to any direction or whip issued by such political party or by any person authorized by it in this behalf, without obtaining prior permission of such party or person. After the constitution
(Fifty-Second Amendment) Act, 1985 the seventh schedule has been added to the Constitution of Jammu and Kashmir in the year 1987 which is popularly known as Anti Defection law of Jammu and Kashmir.

Even after deletion of split provision from the Tenth Schedule after enactment of the constitution (Ninety-First Amendment) Act, the provision relating to split continues to exist in Anti defection law of Jammu and Kashmir. 

In case of Jammu and Kashmir if any question arises as to whether a member of a House has become subject to disqualification under the provision of Seven Schedule to the Constitution of Jammu & Kashmir, the question shall be referred for the decision of the leader of legislature party to which such member belongs and his decision shall be final. In case however where the question which has arisen is party, the question shall be referred for the decision of speaker or, the chairman, as the case may be, and his decision shall be final. However, if the question relates to a member not belonging to any political party, such question shall be referred for the decision of the speaker or the chairman, as the case may be, and his decision shall be final.

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14 Inserted by the Constitution of Jammu and Kashmir (Eighteenth Amendment) Act, 1987
15 Paragraph 3 of Seventh Schedule of the Constitution of Jammu & Kashmir
16 Paragraph 6 of Seventh Schedule of the Constitution of Jammu & Kashmir
17 Ibid
18 Supra Note, 16
1.6 Instances of Defection in India

In India, instances of defection are found before its independence. In fact, the evils of crossing the floor, political turncoatism, politics of opportunism, politics of defection or horse trading had started much earlier, as early as 1937 when Mr. Hafiz Mohd. Ibrahim elected on Muslim League ticket joined the Congress Legislature Party by crossing the floor and was appointed as a Minister in the cabinet of Pt. Gobind Ballab Pant in U.P. Subsequently, he resigned from the Assembly and contested the election on Congress Ticket and won the election. Toppling game was played in Bengal in March 1945, when Muslim League Ministry lead by Khwaza Nazimuddin was voted out of office when Nawab Bahadur of Dhaka along with his 15 friends defected (Dynamics of Indian Government and Policies 1985).19

During Montford Reforms, Shyam Lal Nehru, a member of the Central Legislature who had been elected on the Congress ticket crossed the floor and joined the British side. At that time Pandit Moti Lal Nehru who was leader of the Assembly party strongly criticised and condemned him and Mr, Shyam Lal Nehru was expelled from the party.20

According to the Chavan Committee Report of 1969, following the Fourth General Elections, in the short period between March 1967 and February 1968, the Indian political scene was characterized by numerous

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19 Supra Note 7
20 Supra Note 1 Pg 4
instances of change of party allegiance by legislator in several States. Out of roughly 542 cases in the entire two decade period between the First and Fourth General Elections, at least 438 defections occurred in these 12 months alone\(^{21}\) among independents, 157 out of a total 376 elected, joined various political parties in this period. The lure of office played a dominant part on decisions of legislators to defect. It was obvious from the fact that out of 210 defecting legislators of various states, 116 were included in the Councils of Ministers which they helped to form by defection.\(^{22}\)

Between the fourth and Fifth General Elections in 1967 and 1972 from among the 4000 odd members of 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 legislator had changed their party affiliations and several of them did so more than once - some of them as many as five times.\(^{23}\)

After the commencement of the Anti-defection Law, the first case of disqualification of a member of Lok Sabha on the ground of defection was that of a Congress (I) member from Mizoram, Lalduhoma.

\(^{21}\) S. Agarwal “The Anti-Defection Law in India”, Parliamentarian, January 1986, LXVII No1. And quoted in supra note.2

\(^{22}\) Supra note 21

\(^{23}\) Supra Note.2, Pg.2
1.7 Anti-defection Legislation in other countries

Anti-defection law is not only practiced in India but it is prevalent in various other countries. But only five out of thirty six older democratic nations like India, Israel, Portugal, Trinidad & Tobago etc. have Anti-defection laws. On the other hand, thirteen out of fifty four newer democratic nations\textsuperscript{24} have Anti-defection laws. Nineteen out of fifty-eight semi-democratic\textsuperscript{25} nations have Anti-defection laws. While in the non-democratic nations\textsuperscript{26} only four out of forty five have Anti-defection laws. So, over all out of one hundred and ninety five nations only forty one nations have floor-crossing laws. Only 14 percent of established democracies in their floor crossing law made provision for forfeiture of their parliamentary seats if they change political parties as on 2007. On the other hand, two democratic nations New Zealand and South Africa, once they had such floor crossing law but they abolished such law.\textsuperscript{27}

In a number of Commonwealth Countries there are no legal restrictions against floor crossing among the members of parliament, and

\textsuperscript{24} Newer Democratic Nations like Belize, Bulgaria, Ghana, Guyana, Hungary, Samoa, Lesotho, Mexico, Namibia, Romania, Senegal, Suriname, Ukraine etc
\textsuperscript{25} Semi-Democratic Nations like Armenia, Bangladesh, Fiji, Gabon, Kenya, Macedonia, Malawi, Mozambique, Nepal, Niger, Nigeria, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Sri Lanka, Tanzania, Uganda, Zambia etc.
\textsuperscript{26} Non-Democratic Nations like Congo (Democratic Republic), Pakistan, Thailand, Zimbabwe etc
\textsuperscript{27} Kenneth Janda: “Laws Against Party Switching, Defecting or Floor-Crossing in National Parliaments”, Table No.2, Pg. 4, http://www.partylaw.leidenuniv.nl/uploads/wp0209.pdf;
as such it is common behaviour in countries like the United Kingdom, Australia and Canada. The advanced democracies like Britain, Australia, Canada or New Zealand have also known defections particularly in the early stages of their institutionalization of conflicts for political power. For example, in Australia, 245 MPs had crossed the floor between 1950 and 2004, representing a total of 24 percent of MPs seated in Parliament during that period.\textsuperscript{28} Instances of fence-sitting legislators, of some of the most eminent public men and parliamentarians defecting from their parties, and of whole groups of legislators changing their political loyalties are not unknown in British parliamentary history. Leaders like Edmund Burke, William Gladstone, Joseph Chamberlain, Winston Churchill and Ramsay MacDonald also defected from their respective parties.\textsuperscript{29} In the United States political landscape dominated by its two party system, switches generally occur between the Republican party and the Democratic Party, although a number of notable switches to and from third parties have occurred. Since 2004, in a reversal of a trend that had seen predominantly democratic office holders switching labels, a number of Republican elected officials in states throughout the country have opted to become Democrats. Although, everywhere, it is considered an


\textsuperscript{29} Subash C Kashyap, “The Politics of Defection”, 1st Edn 1969 PP13-16
extra-ordinary step for a legislator to quit the party on whose ticket he is
elected to the legislature, he has, nonetheless, a democratic right to do so.

Certain democratic nations prefer to incorporate provision in their
national Constitution to ban party switching instead of making ordinary
legislation on the ground that it is difficult to change. On the other hand,
most established democratic nations did not favour any kind of law which
has the effect of outlawing party switching or defection. They think about
the democratic values such as Freedom of speech, expression and
association of individual parliamentary legislators to switch from one
political party to another. They considered defection or switching parties
as compatible with established democratic values and any kind of anti-
defection law prohibiting defection as direct infringements on political
freedom of legislators.

A very brief comparison of the Anti-defection law of India with the
floor crossing law of other countries is given here. Under the Tenth
Schedule to the Constitution of India a member of a Parliament or a State
Legislature belonging to any political party shall be disqualified if he
voluntarily gives up his membership of such political party. A similar
provision is found in the Constitution of Bangladesh, which says that a
member shall vacate his seat if he resigns from the political party on
whose ticket he contested the election.\textsuperscript{30} The Constitution of Pakistan lays down the grounds of defection on which a member of a parliamentary party in a House is disqualified, - if he resigns from membership of his political party or joins another parliamentary party.\textsuperscript{31}

Under the Tenth Schedule to the Constitution of India a member of a House shall be disqualified if he votes or abstains from voting in such House contrary to any direction issued by his political party. Same provision is found in the Constitution of Bangladesh, which provides that a member of a House shall vacate his seat if he votes against the directions given by his party.\textsuperscript{32} In the same line, the Constitution of Pakistan provides that a member of a parliamentary party in the House will be disqualified if he votes or abstains from voting in the House contrary to any direction issued by the parliamentary party to which he belongs, in relation to election of the Prime Minister or the Chief Minister, a vote of confidence or a vote of no confidence, or a Money Bill.\textsuperscript{33}

The Constitution of Sri Lanka provides that a member of a House who ceases to be a member of his political party or independent group by way of resignation, expulsion or otherwise, loses his seat in the

\textsuperscript{30} Article 70 of the Constitution of Bangladesh
\textsuperscript{31} The Constitution of Pakistan vide article 63A
\textsuperscript{32} \textit{Supra Note.}\textsuperscript{30}
\textsuperscript{33} \textit{Supra Note.}\textsuperscript{31}
Legislature upon the expiration of a period of one month from the date of
his ceasing to be such member.\textsuperscript{34}

Section 40 of the Constitution of Kenya provides that a member
who resigns from his party has to vacate his seat. Article 46 of the
Constitution of the Republic of Singapore says that the seat of a Member
of Parliament shall become vacant if he ceases to be a member of, or is
expelled or resigns from, the political party for which he stood in the
election.\textsuperscript{35} Section 47 of the South African Constitution provides that a
member loses membership of the Parliament if he cease to be a member
of the party that nominated him.

Regarding disqualification of Independent and Nominated members
on the ground of defection, Anti-Defection law varies from country to
country. Under the Tenth Schedule to the Constitution of India an
independent Member of Parliament or Legislature of a State shall be
disqualified if he joins any political party after his election. In case of a
nominated member of a House, six month time is allowed to join any
political party but a nominated member shall be disqualified from the
House if he joins any political party after the expiry of six month from the
date on which he takes his seat in the concerned House. Similarly, the
floor crossing law of Ghana and Sierra Leone provides that an

\textsuperscript{34} Article 99(13) of the Constitution of Sri Lanka
\textsuperscript{35} Article 46 of the Constitution of the Republic of Singapore
independent member shall be disqualified from Parliament if he joins any political party after his election as an Independent member. In Papua New Guinea, an independent member of Parliament shall be disqualified if he joins any political party after his election as an independent member.

On the other hand, no provisions in respect of Independent and Nominated members are found in the floor crossing law of Belize and Guyana. In Bangladesh, when a independently elected candidate join any political party, he is deemed to have been elected as a nominee of that party in which he subsequently joins and there is no provision for nominated member at the Parliament of Bangladesh. In Lesotho, Malawi and New Zealand, independent member is allowed to join any political party and they would not lose their seats if they join any political party after election. In Zimbabwe, an independent or nominated Member of Parliament is not prohibited to join any political party after his election or nomination.

It is found that in several countries final authorities to decide disputed question of defection vested with the presiding officers of the House but in some countries provision for appeal to the court or to the Election Commission is made. Under the Tenth Schedule to the Constitution of India such adjudicatory power is vested with the presiding officers of the respective House. However, on the question of disqualification of a Speaker or Chairman of a House, the Tenth Schedule authorise the House
to select a member of the House who will decide the question of disqualification of Speaker or Chairman of the concerned House. The court has limited power of judicial review of such decision. The Anti-Defection law in this point is different in Bangladesh, where the Speaker shall within 30 days after a dispute has arisen, prepare a statement and send it to the Election Commission to hear and determine the alleged dispute of defection. But under the Indian Anti-Defection law no time limit is mentioned for adjudication. Similarly in Kenya, the alleged dispute of defection is decided by the Speaker and the aggrieved member may appeal to the High Court. Article 48 of the Constitution of South Africa provides that Parliament decides on any question relating to the disqualification of a member on the ground of defection.

In India before the commencement of the Constitution (Ninety-First Amendment) Act 2003, paragraph 3 of the Tenth Schedule exempted a member from disqualification if there is a split of one-third member of the Legislature party. Presently, paragraph 4 of the Tenth Schedule exempted a member from disqualification if there is a merger of two-third member of the Legislature party. Similarly, in Nigeria, exemption from disqualification is provided on the ground of splits and merger. But the floor crossing law of Nigeria has not prescribed any specific number as to what constitutes a split or a merger in the party. On the other hand, no such exemption provision on the ground of splits or mergers in the
legislature party is found in the Anti-Defection law prevailing in Bangladesh.

1.8. **Research Methodology:**

   In this study the investigator proposes to use both doctrinal and non-doctrinal method of research while conducting the study. In this study, the researcher has collected information and data through 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.

1.9. **Organisation of Thesis**

   Regarding the organization and for convenience of discussion, the present thesis has been divided into 7 Chapters.

   **The First Chapter** deals with Introduction, where the investigator has discussed aims and objective of Anti Defection Law, the concept of defection and evolution of the Anti Defection law in India. Thereafter, aims and objective of the study, research problem of the research work has been stated and then the rationale behind the Law and its scope and extent has also been discussed. In the last part of this chapter the Anti Defection law of Jammu and Kashmir and a comparison of Anti-Defection law of India and other countries have been discussed.

   **The Second Chapter** deals with historical background of Anti Defection law in detail. In this chapter the present 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. Besides this the present researcher has here discussed the Law Commission and Election Commission Recommendation on Anti Defection Law and the enactment of the Constitution (Ninety-First Amendment) Act 2003.

The Third Chapter is constitutional provision relating to Anti defection law in India. In this presentation, the investigator has attempted to trace out the constitutional provisions relating to Anti defection law, the purpose for enacting the Constitution (Fifty-Second Amendment) Act 1985 i.e. incorporation of the Tenth Schedule and other amendments are outlined, the provision as to disqualification on ground of defection under the Tenth Schedule of the constitution of India, scope and constitutionality of Tenth Schedule of the constitution of India, certain definition such as ‘House’, ‘Legislature party’ ‘original political party’, ‘political party’ and ‘Voluntary given up’ are explained. Thereafter, the researcher examined the scope and extent of ‘whip or any Direction’, and scope and extent of Split and Merger. In the last part of this chapter ‘position of independent and nominated member’ of the House and status and position of expel and unattached member have been discussed.
Here a discussion has been given on the Report of the various Reform Committees constituted for the study and suggestions for improvement of the Anti Defection law, Report of the National Commission to Review the Working of the Constitution and Recommendation of law Commission on Anti-defection law.

The Fourth Chapter is on the role of Speaker under Tenth Schedule. Speaker’s office is considered to be of great dignity as he represents the house and played a pivotal role under the Tenth Schedule. Under the Tenth Schedule to the Constitution of India adjudicatory power to decide question of disqualification of a member on the ground of defection is vested with the Speaker/Chairman of the concerned House. In this chapter researcher has analysed the 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 and bar of jurisdiction of court has also been examined. The decision of various Lok Sabha Speakers as well as the various State Assemblies’ Speakers which has created inconsistency between them and confrontation between Speaker and court has also been discussed.

In the Last Part of this Chapter, with due respect to the high office of the Speaker, a criticism has been given against the investiture of adjudicatory power upon the presiding officers of the House on the ground that it fails to satisfy the requirement of independent impartial
adjudicatory authority. The Speaker/Chairman of the House is a political creature; therefore, he does not satisfy the requirement of independent adjudicatory authority. It is found that most of the times Speaker/Chairman of the House takes a view which is in the interest of the party to which he belongs.

**The Fifth Chapter** deals with Anti defection Law vis-a-vis right to freedom of speech and expression. In this chapter the researcher has tried to discuss the freedom of speech and expression of the member of the House under Article 105 and 194 of the Constitution of India and impact of Anti defection law on such right. The view of the judiciary as to whether the right to freedom of speech and expression is curtailed by the Tenth Scheduled, 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 have also been discussed in this chapter.

**The Sixth Chapter** is on the judicial decisions on Anti-Defection law. In this chapter the investigator has made an effort to examine 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 jurists, lawyers and students in understanding the concept and law relating to
Anti defection. Here working of the Anti-defection Law is discussed by analysing the recent cases of defection and shortcomings of Anti-defection law.

**Chapter Seven** is relating to the conclusion and suggestion arrived at as a result of discussion in the previous six 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.

**Review:**

The Tenth Schedule to the Constitution of India, popularly known as ‘Anti-Defection Law’, has been passed with the aim of outlawing the malice of defection but due to certain in build loopholes in the law and ever increasing political dishonesty, the law has failed to achieve its desired goals. The politicians used such loopholes for their own benefit. The menace of defection has eroded the values of Indian parliamentary democracy. Therefore, the investigator has made an effort to find out the defect in the existing Anti-Defection law by analysing its provisions, by discussing various incidents of defection along with the various decisions of the Supreme Court and High Courts with a view to give suggestions for the removal of such lacuna in the law.