CHAPTER-2

CONSTITUTIONAL PROVISIONS RELATING TO ANTI-DEFECION LAW

"The object of such laws is to preserve democratic structure of the Legislature and safeguard political morality in legislators."

- Banja K Phom Vs. Thenacho

The basic idea behind Anti-Defection Law was to prohibit defection by stipulating that the defectors by their act of switching party loyalties could lose their membership of the house. To create a viable deterrence, it envisaged a firm statutory mechanism that discouraged the potential defector from changing party affiliation. Accordingly, the Constitution (Fifty-second Amendment) Act, 1985 amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of the seats and disqualification from membership of Parliament and the State the legislatures and added a new schedule (i.e. the Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on ground of defection. Constitutional provisions relating to Anti-defection are given below:

1. **Article 102(2) and 191(2) of Indian Constitution**

1. **Article 102(2)**

* A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Article 102 before it was amended by the Constitution (Fifty-second Amendment) Act, 1985 provided for a person being disqualified for being chosen as and for being a member of parliament on grounds of holding an office of profit, being of unsound mind or an undischarged insolvent or not being a citizen of India or being disqualified by or under any other law. The Representation of Peoples Act, 1951 disqualified a person from the membership of a legislature for being guilty of electoral offences, corrupt practices etc.

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II. Article 191(2)

A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

This corresponds to the article 102 (2) and makes a similar provisions with reference to disqualification of a member of a State Legislature under the Tenth Schedule.

2. The Tenth Schedule of the Indian Constitution

I. Object of the Tenth Schedule

The statement of objects 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 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 the current session of Parliament an anti-defection Bill. The Bill is meant for outlawing defection and fulfilling the above assurance."

The purpose for enacting the Constitution (Fifty-second Amendment) Act, 1985 i.e. incorporation of the Tenth Schedule and other amendments was not only to stabilise the legally elected Governments and to prevent the political immorality and corruption, but also to make them effective. If the provisions are read down, the main purpose would be defeated\textsuperscript{166}.

The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy\textsuperscript{167}.

The objects and purposes of the Tenth Schedule would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of Government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstention or when such voting or abstention is on a matter which was a major policy and

\textsuperscript{166} Parkash Singh Badal Vs. Union of India, AIR 1987 R&H. 263 (FB).

programme on which the political party to which the member belongs went to the polls.

The objects and reasons for enacting the Constitution (Fifty-second Amendment) Act, 1985 and the Maharashtra Local Authority Members Disqualification Act, 1986 are clear. The same seeks to prevent defection. The same further prevents independent members from loosing their character as such and prohibits them from joining a political party or front.

II. Constitutional Validity of the Tenth Schedule

The Constitution (Fifty-second Amendment) Act, 1985 which has since popularly come to be known as the Anti-Defection Law, has been the subject matter of a controversy from the very beginning. It has been questioned on several grounds viz, that it is violative of the basic structure of the Constitution, that it is beyond the competence of Parliament and that it gives preference to expediency over principles. Even before the Anti-Defection Law was passed by Parliament, serious doubts were expressed in regard to its constitutionality and advisability. Also, it was apprehended that legislative measures alone would not be an effective remedy against the malady of defections. Thus, treatises on the politics of defection published in 1969 and 1974 pointed out a number of politico-constitutional and legal grounds on which an anti-defection law could be questioned. The questions raised then included:

(i) Whether the people voted for party programmes and policies or for persons and, if for the latter, whether party bonds could be given constitutional recognition and protection?

(ii) Whether there was an unbreakable bond between the members and the political party on whose symbol they contested the election? Whether the basic relationship was between the party and the member or between the member and the constituency people whom he represented?

(iii) Whether it was fair to make a distinction between defection by individuals and defection by groups merely because the latter might follow or might for the sake of convenience be called split of a party or merger of parties particularly

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Ibid


when motivations behind splits and mergers or group defections may not often be very different from those for defections? Whether an individual defector should be punished while defectors in a group could go scot free under the garb of a party split?

(iv) Whether there was any justification for not accepting the Chavan Committee recommendation for debarring defectors from occupying Ministerial offices? Was it not conceivable that in certain situations while a defector might become liable to be disqualified for membership, he might quite constitutionally and legally become or continue to be a Minister for at least six months or till the next election in case of dissolution of the popular House?

(v) Whether the disqualification provision did not militate against the basic freedoms of association, opinion and expression—including the freedom of changing association, opinion etc.—guaranteed under the Fundamental Rights Chapter of the Constitution? Also what happened to the most fundamental parliamentary privilege of members guaranteed under Articles 105 and 194 of the Constitution, namely, that of freedom of speech and expression, in the Houses of legislatures? Would any legislation—even constitutional amendment—which restricted the freedom of choice or bound the vote of a legislator not amount to tampering with the fundamentals of the Constitution and become an affront to democratic norms?

(vi) Would disqualifying legislators on grounds of defection not open floodgates of litigation (even if the jurisdiction of courts was sought to be barred) and create a situation where legislators themselves might have to look to the courts for protection of their rights vis-a-vis legislature?

Paragraph 7 of the Tenth Schedule which bars the jurisdiction of the courts was struck down as being ultra vires of the Constitution by the High Court of Punjab and Haryana and an appeal against this order was preferred by the Government in the Supreme Court. Several writ petitions challenging the validity and constitutionality of the 1985 enactment were also filed in the Supreme Court and various High Courts. The Supreme Court on the request of the Government withdrew and transferred to itself all the writ petitions pending before various High Courts as it was felt by the Government that substantial questions of law were involved in them. The basic issues raised may be summarized as follows:
The words deflection and dissent are not synonymous. They carry separate and distinct meanings. Defiance of party direction or Whip may be expression of dissent but not deflection. It is well known that in UK, Canada, Australia and New Zealand where Parliamentary democracies similar to India exist, members sometime vote in defiance of the party Whip or direction and they are not penalised. In fact, in these countries dissent has played an important part. There is no question in Britain or in any of the other three countries mentioned above of unseating the dissenting member. Mere non-compliance with a party directive can never be considered to be political deflection because such a member has neither changed sides nor crossed the floor; he continues to remain a member of his party.

In India, the electorate is not called upon to choose between the political parties; we have accepted the model under which a member of the legislature is supposed to represent primarily the State or the nation as a whole depending upon whether he is a member of the State Assembly or the Lok Sabha. So it cannot be denied that a representative’s prime loyalty is to the electorate and the nation and, since he has been elected on the basis of a party manifesto, he also owes allegiance to the fundamental policies and programmes set out in his party’s manifesto. In the case of a conflict between the action of the leadership or the bosses of his party in the legislature and the interests of the people and the nation, or in the event of the leadership violating the pledges given to the people, what is the duty of the member concerned? Is it his right to serve the interests of the people? Is it not his duty to abide by the party manifesto?

If votes are not going to be altered by speeches, what is the relevance or rationale of parliamentary democracy? Debates and discussions are expected to be and often are helpful in swaying the voting pattern in legislatures. For example, the Indian Independence Bill, 1947 was opposed by the Conservative Party of England. Since the Labour Government had a big majority, the Bill passed through all the stages in the Commons easily. But in the House of Lords, there was a Conservative majority. The Conservatives could have defeated the Bill. It was, however, Conservative Lord Halifax’s speech that changed the mood of the Lords and the Bill was passed. In India itself, story is told how Jawaharlal Nehru tried to defend the provisions of a Bill he was himself piloting and at the end remarked that the majority in the House was with him on that issue. C. Rajagopalachari who was known for his sharp wit, demolished all of Nehru’s arguments and concluded by saying that on that
day majority might be with Nehru but logic was with him. Nehru gracefully yielded and accepted Rajagopalachari’s view. Parliamentary democracy can have meaning only if debates are allowed to sway the voting pattern in the legislature.

The quintessence of Parliamentary democracy is the continuous and day-to-day answerability of the Government to the Legislature, enforced through the doctrine of collective responsibility enshrined in article 75 and 113 as well as the freedom of speech and vote under articles 105 and 194 given to members. This answerability has been eroded by the Fifty-second Amendment Act. All that the Executive has to do now is to issue a Whip to the members.

Under the Constitution, Parliament is required to exercise its powers in certain matters which are quasi-judicial in nature, e.g. under article 61 (relating to the impeachment of the President of India), article 124(4) (relating to removal of Supreme Court Judges), article 148(1) (relating to removal of Comptroller and Auditor General), article 217(1)(b) (relating to removal of a Judge of a High Court) and article 324(5) (relating to removal of the Chief Election Commissioner). The proceedings in Parliament of such quasi-judicial nature may be influenced by the issue of a party directive under Para 2 of the Fifty-second Amendment Act which is against the rule of natural justice.

Paragraph 3 of the Tenth Schedule had recognised the political phenomenon of splits in parties, but it had laid down that disqualification on ground of defection shall not apply to a member if he and other members of the party constitute a group representing a faction arising as a result of the split in the original political party and such group consists of not less than one-third of the members of the legislature party. There was no nexus between numbers and the fact of a split. The split was a complex phenomenon. It could occur because of differences over policy and programmes, organisational principles, functioning and alignment of social forces within a political party, etc. Elements of personality, temperamental incompatibility or personal ambitions of party leaders or members might also not be wholly absent. There was nothing sacrosanct about the figure one-third. A history of some of the p in India would show that constitutional and legal constraints did more harm than good. They destroyed the natural growth and fluidity of the system. To absolutely freeze a party system by stifling dissent was fraught with greater danger and might threaten the healthy growth of Indian democracy. Paragraph 3 of the Tenth Schedule relating to
split was, therefore, not based on any rational or intelligible differentia, violated the principles of equality and the basic constitutional structure and was therefore void.

Sub-para (2) of paragraph 2 of the Tenth Schedule deals with an independent member who has not been set up by a political party. Under this sub-para, an independent member will be disqualified if he joins any political party after his election as a member of the legislature. But under sub-para (3) of paragraph 2 of the said Schedule, a nominated member is allowed to join a political party within six months of his nomination as a member. An independent member’s freedom to join a party is fettered although he is master of himself and owes his election to no political party. On the contrary, the ruling party picks and chooses persons for nomination and in a way puts them under obligation. Such members are, therefore, likely to join the ruling party. Both these provisions are vitiated by an inbuilt irrationality and bias and are therefore violative of article 14.

The original articles 102 and 191 which were amended by the Fifty-second Amendment Act provided for disqualification for membership on grounds such as conflict of duty (office or profit), unsoundness of mind, insolvency, non-citizenship, or allegiance to a foreign state. Also, additional disqualifications could be laid down by Parliament by law. Accordingly, the Representation of the People Act, 1951, provided for disqualification on the ground of conviction for certain offences, corrupt election practices, moral turpitude and so on. It was argued that the inclusion of the Tenth Schedule in articles 102 and 191 violated the principle of ejusdem generis insofar as there was absolutely no nexus between the vices, infirmities, incapacities, defects, conflict of duty and corrupt election practices and the subject matter of the Tenth Schedule. None of the matters coven by the original articles 102 and 191 had anything to do with what a legislator lawfully did in a House of Legislature under articles 105 and 194.

Paragraphs 6(2) and 7 sought to kill judicial review by treating the disqualification proceeding under the said Schedule as a proceeding in Proviso to clause (2) of Articles 368 of the Constitution provides that if an amendment to the Constitution seeks to make any change in Chapter IV of Part V (relating to the Union Judiciary) or Chapter V of Part VI (relating to the High Courts in the States), the amendment is required to be ratified by the legislatures of not less than one-half of the States by resolutions to that effect passed by those legislatures before the Bill making provision for such amendment is presented to the President for assent. Though the
Fifty-second Amendment Act did not seek to make any change in either Chapter IV of Part V or Chapter V of Part VI, it in effect did erode and abrogate the powers of the Union Judiciary and the High Courts by barring their jurisdiction. The Constitution Amendment Bill ought, therefore, to have been ratified in terms of proviso to clause (2) of Article 368 of the Constitution before it could be presented to the President for his assent, which was not done. The entire Constitution (Fifty-second Amendment) Act, 1985, could therefore, be held to have been ab initio constitutionally invalid.

On 27 December, 1990, the Speaker informed the House that a notice was received from the Registrar, Delhi High Court, requiring him to arrange to show cause in connection with Civil Writ Petition No. 3871 of 1990. The Writ Petition, inter alia sought to challenge the validity and constitutionality of paragraphs 6 and 7 of the Tenth Schedule to the Constitution (Fifty-second Amendment) Act, 1985. He pointed out that as per well-established practice and convention of the House, he had decided not to respond to the notice and had passed on the relevant papers to the Minister of Law and Justice for taking such action as he might deem fit to apprise the High Court of the correct constitutional position and the well-established conventions of the House.

On 8 January, 1991, the Speaker further informed the House that he had received on that day a letter from the Registrar, Delhi High Court, forwarding therewith a copy of an order dated 8 January, 1991 passed by the Division Bench of Delhi High Court. The Division Bench had passed the following order on the arguments on stay application in Civil Writ Petition No. 3871 of 1990:

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The arguments of the stay application are in progress. It would be in the fitness of things that an order of status quo may be passed as the hearing of the arguments on the stay application is likely to take time.

Therefore, we order that all the petitions presented before respondent No. 2 under the Tenth Schedule of the Constitution shall not be proceeded with or pursued by the petitioners before the Speaker and we further order that status quo as it exists today shall be maintained by the parties”.

On 9 January, 1991, the Speaker informed the House that he had discussed the matter with the Leaders of Parties and Groups earlier in the day and it was unanimously agreed that the orders of the High Court be ignored. Accordingly, the Speaker ignored the orders of the Delhi High Court.
legislature under Articles 122 and 212 of the Constitution and by barring the jurisdiction of courts in respect of any matter connected with the disqualification of a member. The power of judicial review was the most potent weapon in the hands of the judiciary for maintenance of rule of law. The provisions, therefore, could be questioned as being invalid, bad in law and perhaps even destructive of the basic structure of the Constitution.

On 11 January, 1991, the Speaker again informed the House that he had received on the same day another letter from the Registrar of Delhi High Court. The Full Bench had passed the orders that they were prima facie of the opinion that the Speaker had jurisdiction to decide the question of disqualification of Lok Sabha members under paragraph 6 of the Tenth Schedule and the rules framed there under on the petitions presented to him and accordingly, they had vacated the interim order passed by them on 8 January, 1991.

In Kiboto-Holohan v. Zachillo, matters relating to disqualification of some members of the Nagaland Assembly on the ground of defection under the Tenth Schedule of the Constitution came up for consideration. Matters relating to several Legislative Assemblies including those of Manipur, Meghalaya, Madhya Pradesh, Gujarat and Goa were also heard along with since all of them involved decision of certain constitutional questions relating to the constitutional validity of para 7 of the Tenth Schedule and of the 52nd Amendment.

The Supreme Court found that there were legal infirmities in the passage of the Anti-Defection Law inasmuch as the Constitution Amendment Bill had not been ratified by the requisite number of State Assemblies before being presented for the President's assent. Also, the Speaker's functions under the Tenth Schedule called for a judicial determination of issues under the law. The process of determining the question of disqualification could not be considered part of the proceedings of the House and as such not amenable to judicial review. The Supreme Court struck down para 7 of the Schedule barring the jurisdiction of Courts and declared that while operating under the Anti-Defection Law, the Speaker was in the p of a tribunal and therefore, his decisions like those of all tribunals were subject to judicial review.

In regard to the various contentions raised and urged at the hearing, the Supreme Court held as follows:

(1) That the Paragraph 2 of the Tenth Schedule to the Constitution is valid, its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended. The provisions of Paragraph 2 do not violate any rights or freedom under Articles 185 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of Paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected members and, therefore, of the principles of Parliamentary democracy, is unsound and is rejected.

(2) That having regard to the background and evolution of the principles underlying the Constitution (52nd Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule in the Constitution of India, the provisions of Paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effect of Articles 136, 226 and 227 of the Constitution of India, and, therefore, the amendment would require to be ratified in accordance with the proviso to clause (2) of Article 368 of the Constitution of India.

(3) That Paragraph 7 of the Tenth Schedule contains a provision which is independent of, and stands apart from, the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of Paragraph 7 and are complete in themselves, workable and are not truncated by the decision on Paragraph 7.

(4) That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity, are concerned.
That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh’s case [Ref. No. 1, (1965) 1 SCR 413] to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words “be deemed to be proceedings in Parliament” or “proceedings in the legislature of a State” confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

However, having regard to the constitutional scheme in the Tenth Schedule, judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen. Having regard to the constitutional intendment and the status of the repository of the adjudicatory power, no quia timet actions are permissible, the only exception for any interlocutory disqualifications or suspensions which may have grave, immediate and irreversible repercussions and consequence.

(5) It would be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office.

(6) The expression ‘any direction’ occurring in Para 2(1)(b) of the Tenth Schedule requires to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. Those objects and purposes define and limit the contours of its meaning. The assignment of a limited meaning is not to read it down to promote its constitutionality but because such a construction is a harmonious construction in the context. There is no justification to give the words wider meaning.

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. This would be possible if Paragraph 2(1)(b) 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 motivated by the lure of office or other similar considerations. For this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b), would have to be limited to a vote on motion of confidence or no confidence in the Government or where the motion under consideration relates to a matter which was an internal policy and programme of the political party on the basis of which it approached the electorate.

(7) The meaning to be given to “split” must necessarily be examined in a case in which the question arises in the context of its particular facts. No hypothetical predications can or need be made.

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 Paragraph 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 Paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct to voting or abstaining from voting contrary to such a direction.

In a minority judgment delivered by two of the five judges, inter alia the following points were made:

In the absence of ratification of the State Legislatures, not only Para 7 but the entire Constitution (Fifty-second Amendment) Act, 1985 is rendered unconstitutional. Adjudication of matters regarding disqualification of members should have been entrusted to an independent body outside the House and not to the Speaker who depended for his continuance on the majority of the House.

In Ravi S. Naik v. Union of India\(^{172}\), the Supreme Court held that (1) the burden to prove the requirements of paragraph 2 is on the person who claims that a member has incurred disqualification; (2) the burden to prove the requirements of paragraph 3 is on the member who claims that there has been a split in his original party; (3) the requirements of a split are: (a) the member should claim to be part of a

\(^{172}\) AIR 1994 SC 1558.
group representing a faction arising from a split in the original political party, and (b) such a group must consist of not less than one-third of the members of such legislature party.

The court further held that Disqualification Rules were procedural in nature and any violation of the same would be immune from judicial review inasmuch as judicial review is confined only to breaches of constitutional mandates, mala fides, non-compliance with principles of natural justice and perversity.

In G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly\(^{173}\), the Supreme Court clearly laid down the law that an elected member of a House shall belong to the political party, if any, by which he was set up as a candidate for election as such member. Even if he was expelled from the party, he would not cease to be a member of that party in the House for purposes of the Tenth Schedule. There is no provision of any “unattached” member in the Tenth Schedule and even if for convenience, a member is shown as “unattached” that would not change his constitutional status as a member of the party that had set him up as a candidate. But if such a member another party, he will certainly incur disqualification on the ground of voluntarily giving up the membership of his party.

In Jagdambika Pal v. Union of India\(^{174}\), the Supreme Court upheld the composite floor test for, in effect, selecting by election one of claimants as the Chief Minister.

In V. Mahachandra Prasad Singh v. Chairman, Bihar Legislature Council\(^{175}\), the Supreme Court reiterated the law declared earlier to the effect that mere strict adherence to procedure laid down in the rules cannot affect decision in compliance with the constitutional provisions for disqualification on grounds of defection.

In Jagjit Singh v. State of Haryana, the Supreme Court\(^{176}\), inter alia declared that the test of an independent member joining a party is to ascertain whether he has given up his independent character on which he was elected. A mere expression of outside support would not imply joining a party. Each case has to be decided on the basis of material on record. Also, paragraph 3 regarding split as a protection to defection cannot be availed of by a member of a one-man party. The court left it to Parliament to consider whether the power to decide on disqualification on

\(^{173}\) ATR 1996 SC 1060
\(^{174}\) JT 1998 (4) SC 319.
\(^{175}\) ATR 2000 SC 69.
\(^{176}\) AIR2007SC390.
ground of defection should be entrusted to an authority other than the speaker/chairman.

III. Interpretation by Speakers

One point of legal interpretation pertaining to the operation of the Anti-defection law in the Tenth Schedule that needed to be strongly reiterated in the light of the developments at the level of the Union and the State Legislatures was that in practice, the phenomenon of split had become very largely something that only concerned and took place within a legislature party. The only worry of intending defectors was to see that they somehow constituted the one-third number of their Legislature Party membership. The moment this magical figure was reached, the defectors required the Speaker to recognise them as a party and give them separate seats and in most cases the Presiding Officers agreed. Legally, this was most untenable and contrary to the provisions of the Constitution. The Tenth Schedule, even before the 2003 91st constitutional amendment, contained no concept of a split in the legislature party as such. Also, there was no provision for splits in the State or other units in case of an All India party. To seek the protection of the ‘split’ clause against disqualification for defection, it had got to be shown that:

(i) there had been a split in the original political party, i.e., the party outside the legislature which put up candidates to fight elections to the Houses of Legislatures.

(ii) that the one-third or more members of the legislature party claiming the protection actually belonged to a group representing one of the factions of the political party arising as a result of its split.

If the cases of group defections that had taken place during the last few years in the Houses of Union Parliament and State Legislatures were judiciously examined on this basis, it would be seen that in overwhelming majority of cases there was no split and the defecting members deserved to be straight-away disqualified under the Tenth Schedule of the Constitution and the ninety-first constitutional amendment omitting para 3 containing the split provision might have not been necessary.
IV. Scope of Tenth the Schedule

The provisions of Tenth Schedule are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections—Kiboto Holohon vs. Zachillhu.\(^{172}\)

The anti-defection law seeks to recognize the practical need to place the proprieties of political and personal conduct, whose awkward erosion and grotesque manifestations have been the base of the times, above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation.\(^{170}\)

Although originally the Constitution had not expressly referred to the existence of political parties, by the amendments made to \(\mu\) by the Constitution (Fifty-Second Amendment) Act, 1985, there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution, which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from the political party and would thereby be disqualified for being a member of the House concerned. — \textit{Kanhiya Lui Omar vs. R.K. Privedi}.\(^{179}\)

The question of disqualification of a Member on the ground of defection and the Speaker's order thereon rendered under the Tenth Schedule are not based on the result of an election, which can be challenged only by an election-petition in accordance with the provisions of Representation of the People Act, 1951—\textit{Dr. Kashinath G. Jalmi vs. The Speaker, Legislative Assembly of Goa}.\(^{180}\)

V. Tenth Schedule and Art. 105 (2)

\textit{Art. 105(2)} cannot be said to be a source of immunity from the consequences of unprincipled floor-crossing. — Kiboto Holohon vs. Zachillhu.\(^{181}\)

The freedom of speech of a Member is not an absolute freedom. That apart, the provisions of the Tenth Schedule do not purport to make a Member of a House


\(^{170}\) Ibid.


\(^{181}\) Supra n. 14.
liable in any 'court' for anything said or any vote given by him in Parliament or State Assembly, as the case may be.— Kishom Hollom vs. Zachilhu\textsuperscript{183}

Power of judicial review in respect of the order passed by the Speaker/Chairman of the House acting as a Tribunal under 10th Schedule of the Constitution adjudicating any matter is limited and this power cannot be exercised in case of apprehended or threatened action.— Kesahah Gogoi vs. Speaker, Assam Legislative Assembly\textsuperscript{184}

VI. Judicial Review and the Tenth Schedule

Power of judicial review in respect of the order passed by the Speaker/Chairman of the House acting as a Tribunal under 10th Schedule of the Constitution adjudicating any matter is limited and this power cannot be exercised in case of apprehended or threatened action.— Kesahah Gogoi vs. Speaker, Assam Legislative Assembly\textsuperscript{184}

It is not every violation of every rule, which would call upon or require the court to strike down the order of a Tribunal like that of Speaker. Whether the order is to be struck down on the ground of violation of a Rule would depend on a host of circumstances, such as the nature and significance of the Rule, the conduct of the writ-petitioners, prejudice caused to them etc. — Zachilhu Khusantho vs. State of Nagaland\textsuperscript{185}

The judicial review is not available at a stage prior to the making of decision by the Speaker/Chairman, nor would it be available for interfering against any interlocutory order. However, there are exceptions in respect of cases where disqualification or suspension is imposed during the pendency of the proceeding or where such disqualification or suspension is likely to have grave, immediate and irreversible repercussion and consequences.— Kesahah Gogoi vs. Speaker, Assam Legislative Assembly\textsuperscript{186}

Paragraph 1(b) — Scope of Paragraph 1(b) cannot be read in isolation. It has to be read along with paragraphs 2, 3 and 4.— G. Viswanathan vs. The Hon’ble Speaker, T.N. Legislative Assembly\textsuperscript{187}

\textsuperscript{182} Ibid
\textsuperscript{183} (1995) 1 Gau. LR 33.
\textsuperscript{184} Ibid
\textsuperscript{186} (1995) 1 Gau. LR 337.
\textsuperscript{187} AIR 1996 SC 1060 ; 1996 AIR SCW 556; 1996 (2) SCC 353 ; 1996 (1) UJ (SC) 325; 1996 (1) JT 607.
Paragraph 1(b) in referring to the Legislative Party in relation to a member of a House belonging to any political party refers to the provisions of paragraphs 2, 3 and 4, as the case may be, to mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paragraphs 2, 3 and 4, as the case may be. — G. Viswanathan vs. The Hon'ble Speaker, T.N. Legislative Assembly.182

VII. Provisions as to disqualification on ground of defection

(a) Paragraph 1

Interpretation

In this Schedule, unless the context otherwise requires,—

(a) 'House' means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(b) 'Legislature Party', in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or [***]189 paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) 'original political party', in relation to a member of a House, means the political party in which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) 'paragraph' means a paragraph of this Schedule.

'Legislature Party' in Para. 1 (b) — Meaning of

The expression 'Legislature Party' as defined in paragraph 1(b) includes the group consisting of all members of the House for the time being belonging to that political party formed in accordance with paragraph 3, and applies, inter alia, to the faction formed as envisaged in paragraph 3. — Mayawati vs. Markandeya Chand190

'Original Political Party' as in para 1(c) and 'Political party' as in para 2(1)(b) :

'Political Party' in clause (b) of sub-para (1) of para 2 is none other than 'original political party' mentioned in para 3. — Mayawati vs. Markandeya Chand191.

182 Ibid
189 The words "paragraph 3, or as the case may be" omitted by the Constitution (Ninety-first Amendment) Act, 2003 w.e.f. 1-1-2004.
191 Ibid
The argument that the context in para 2(1)(b) requires to equate 'political party' with 'legislature party' even though the definition clause in para 1 reads differently is not acceptable. A reading of sub-para (b) and the Explanation in para 2(1) places the matter beyond doubt that the 'political party' in sub-para (b) refers to the 'original political party' only and not to the Legislature Party. — *Mayawati vs. Markandeya Chand*\(^{192}\).

**'Political Party' — Meaning of**

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. — *W.K. Singh vs. Speaker, Manipur Legislative Assembly*, (1986)

\(^{(b)}\) **Paragraph 2 disqualification on ground of defection**

2. **Disqualification on ground of defection**

(1) Subject to the provisions of paragraphs 3, 4, and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House,

(a) If he has voluntarily given up his membership of such political party; or

(b) If he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention.

**Explanation — For the purposes of this sub-paragraph,**

(a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member,

(b) a nominated member of a House shall,

(c) where he is a member of any political party on the date of his nomination as such member, he deemed to belong to such political party.

\(^{192}\) Ibid.
(ii) in any other case, he deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirement of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fiftieth Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,

(i) whether he was a member of a political party immediately before such commencement, he deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, he deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

Para 2 — Scope of:

The deeming fiction in explanation (a) in para 2(1) of Schedule 10 must be given full effect, for, otherwise the expelled member would escape the rigours of law which was intended to curb the evil of defections. — G. Venantaban vs. The Hon'ble Speaker, T.N. Legislative Assembly

Paragraph 2(1) read with the Explanation clearly points out that an elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member. This is so, notwithstanding that he was thrown

193 Supra n. 24.
out or expelled from that party. — G. Viswanathan vs. The Hon'ble Speaker, T.N. Legislative Assembly\textsuperscript{194}

The action of a political party qua its member has no significance and cannot impinge on the fiction of law under the Tenth Schedule — G. Viswanathan vs. The Hon'ble Speaker, T.N. Legislative Assembly\textsuperscript{195}

Two conditions are sine qua non for avoiding the disqualification when any member of the House voluntarily gives up membership of his original political party. First is that the member concerned should have made a claim that the split in the original political party has arisen, resulting in the constitution of a group in its Legislature Party representing a faction thereof. Second is that such group should consist of not less than one-third of the members of such Legislature Party. — Mayawati vs. Markandeya Chand\textsuperscript{196}

Constitutional Validity of Para 2

The provisions of Paragraph 2 of the Tenth Schedule do not violate any rights or freedom of elected members of Parliament or State Legislatures under Art. 195 or Art. 194 of the Constitution, and is thus constitutionally valid. — Kihoto Hollohan vs. Zachillohu\textsuperscript{197}

Para 2 and Role of the Leader of Legislature Party

There can be no doubt that leader of a Legislature Party occupies an important position in the legislative scheme of things. He has an important role to play under the Rules. He has to convey relevant and necessary information to the Speaker. He has a right to receive copies of the petition with annexures submitted by any member to the Speaker, seeking disqualification of any other member and to furnish written comments thereon to the Speaker. In a case of disqualification under paragraph 2(1)(b) of Tenth Schedule, the involvement of the leader assumes importance inasmuch as condonation of violation of whips arises for consideration. In a case which attracts paragraph 2(1)(a) or Paragraph 3 of the Tenth Schedule, his role does not assume such crucial significance. — Zachillo Khumanto vs. State of Nagaland\textsuperscript{198}

\textsuperscript{194} Ibid.
\textsuperscript{195} Ibid
\textsuperscript{196} Supra n.27.
\textsuperscript{197} Supra n. 14.
\textsuperscript{198} Supra n. 22.
Status of a member being 'unattached'

Being treated as unattached is a matter of convenience outside the Tenth Schedule and does not alter the fact to be assumed under the Explanation to paragraph 2(1) of the Schedule. Such an arrangement and labelling would be of no legal consequence, as the same is not recognised in the constitutional scheme underlying the Tenth Schedule. — G. Viswanathan vs. The Hon’ble Speaker, T.N. Legislative Assembly

Voluntarily giving up of membership of Political Party under clause (a) of para 2(1) and scope of

Where an individual member voluntarily gives up the membership of his political party, he is subject to disqualification under paragraph 2(l)(a). On the other hand, where a group of members belonging to a political party, but whose strength is less than one-third of the members of the Legislature Party concerned voluntarily give up the membership of their political party, they are not entitled to protection under paragraph 3 and they are subject to disqualification under paragraph 2(l)(a). This is the logical interpretation of paragraphs 2(l)(a) and 3 of the X-th Schedule. — Banjak Phum vs. Thencho

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 conduct himself in the manner of a member so that the necessary inference from the conduct is that he has voluntarily given up his membership of the party to which he belonged. — Zachiibu Khusanthe vs. State of Nagaland

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. To require such a formality in the act of voluntarily giving up membership of party would amount to adding a non-existent qualification or condition in paragraph 2(l)(a). — Zachiibu Khusanthe vs. State of Nagaland

Whether a member has voluntarily given up membership of his political party is a matter of inference from admitted or proved circumstances.

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199 Supra n. 24
201 Supra n. 22.
202 ibid
Voluntarily given up his membership" — Inference of

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 belonged. — Ravi S. Naik vs. Union of India (1994) Supp. (2) SCC 641 : All 1994 SC 1558 : 1994 AIR SCW 1214: (1994) 2 SC 211]1996. If a person belonging to a political party that had set him up as candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of the political party and incurs disqualification under Art. 191(2) of the Constitution. — C. Venanathan vs. The Honourable Speaker, T.N. Legislative Assembly204

Word 'Join' — Meaning of

The term ‘Join’ has a wider connotation and the same word is used in the Constitution of a group by various individuals getting together for the purpose of forming an 'Aghadi' or front. — Pandurang Dagadu Parve v. Ramechandran Babureo Hirve205

Whether resignation wipes out the stain of disqualification:

The contention that as the appellant, after the filing of a petition alleging his disqualification, had demitted office of the Speaker, so the enquiry into the alleged disqualification could not be proceeded with, is held to have no substance. The disqualification, if incurred, is from the membership of the House and the subsequent resignation from the office of the Speaker does not bestow immunity from the liability for disqualification — Luis Pratro Barwosa vs. Union of India206

The words "voluntarily given up his membership" occurring in Paragraph 2(1)(a) of the Tenth Schedule are not synonymous with "resignation" and have a wider connotation inasmuch as 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. — Ravi S. Naik vs. Union of India207

203 Ibid
204 Supra n.24.
Para 2(l)(b) — Constitutional Validity of

It cannot be said that the provisions of para 2(l)(b) would be destructive of the
democratic set up, the basic feature of the Constitution, unless read down — *Parkash
Singh Badal vs. Union of India* 208

So far as the right of a member under Art. 105 is concerned, it is not an
absolute one and has been made subject to the provisions of the Constitution and the
rules and Standing Orders regulating the procedure of Parliament. The right of
freedom of speech conferred on a member of the Parliament can be regulated or
curtailed by making any constitutional provision, such as the Fifty Second
Amendment Act. Therefore, the provisions of para 2(l)(b) cannot be termed as
violative of the provisions of Art. 105 of the Constitution — *Parkash Singh Badal vs.
Union of India* 209

Para 2(l)(b) - Scope of

The disqualification imposed by paragraph 2(l)(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. Zachillo* 210

Words "any direction" — Meaning of

Reversing the decision in *AIR 1987 P.dH. 263* that the expression should be
given wider meaning, it is held that the words "any direction" occurring in paragraph
2(l)(b) would require to be construed harmoniously with the other provisions, so as
not to be given wider meaning opposed to the objects and purposes of the Tenth
Schedule.— *Kihoto Hollohon vs. Zachillo*

Expression "any direction" — Scope of

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

209 Tbid.
210 Supra n.14.
relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate — Kihoto Hollohon vs. Zachillhu211

'Political Party' in Para 2 — Meaning of

'Political Party' in clause (b) of sub-para (i) of Para 2 is none other than 'original political party' mentioned in Para 3 and defined in Para 1(c) — Mayawati vs. Markandeya Chand213

A reading of sub-para (b) and the Explanation in Para 2(1) places the matter beyond doubt that the 'Political Party' in sub-para (b) refers to the 'Original political party' only and not to the Legislature Party. — Mayawati vs. Markandeya Chand213

Direction or whip — Need for proper wording of

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 the fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such direction. — Kihoto Hollohon vs. Zachillhu214

Whip — Whether Valid

Whip issued by a political party to vote in favour of a candidate not belonging to it in the Rajya Sabha election is not valid and effective as it is not a matter relating to proceedings of the House, and the member violating such whip cannot be identified because of secrecy of votes cast in the election. Therefore, any alleged defiance of the whip cannot attract the rigour of action as contemplated in para 2(1) of the Tenth Schedule; nor any fraud can be held to have been committed by the accused member on such ground. — Ananga Udaya Singh Deo vs. Ranga Nath Mishra215

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212 Supra n. 26.
213 ibid
214 Supra n. 14.
Paragraph 3- Disqualification on ground of defection not to apply in case of split

3. Disqualification on ground of defection not to apply in case of split Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of the split in his original political party and such group consists of not less than one-third of the members of such legislature party,

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground

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

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

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

Scope

The concept of split as contemplated in Paragraph 3 relates to an original political party and not to its legislature party at the first instance. Questions obviously arise: How such a split can be reckoned, when and by whom? Any split in a recognised/registered political party needs to be reported to and accepted by the Election Commission first, as it gives rise to a new political party. Unless it is done, can there be any scope for it legislature party wing to claim any benefit of such split in the legislature? Most important aspects of a split are the time, reflection of and authority to recognise such split.

Where a group of members belonging to a political party but whose strength is less than one-third of the members of the Legislature, Par concerned, voluntarily give up the membership of their political party, they are not entitled to protection under Paragraph 3 and they are subject to disqualification under Paragraph 2(1)(a). This is the
logical interpretate of paragraphs 2(i)(a) and 3 of the Tenth Schedule. — Banjak Phom vs. Thenacho\textsuperscript{216}

Split — Various Aspects of

A group of members cannot create a split while continuing to retain membership of the party. — Zachilkhu Khusantha vs. State of Nagaland\textsuperscript{217}. A split can be caused only by some members voluntarily giving membership of the party. A member who agrees to cause a split in a party along with certain other members and is prepared to affirm the same writing cannot turn round and say that it was only in the realm of intent or preparation and that he has not effectuated the intention. — Zachilkhu Khusantha State of Nagaland\textsuperscript{218}

Where twelve MLAs of Nagaland People’s Council (NPC) decided split and form a new party, and to request the Speaker to recognise split and allot separate seats to them, but before receipt of the aforesaid letter, the Speaker received a letter from the Party-President of the expelling two MLAs of the splinter group from the Party and a request treat them unattached, and the Speaker passed an order declaring the two MLAs "unattached", it was held that since the two out of the 12 MLAs had been expelled before they split the NPC and formed a separate political party within the knowledge of the Speaker or before they could inform the Speaker in writing about the new formation, they cannot be reckoned for the purpose of deciding whether the splinter group constituted one-third or more of the strength of the Legislature Party. — Banjak Phom vs. Thenacho\textsuperscript{219}

A declaration signed by some MLAs belonging to a party declaring that they had formed a separate group, and produced during the course of hearing before the Speaker, was held to have established the split and formation of the group — Ravi S. Naik vs. Union of India\textsuperscript{220}

Before a claim is made by a member of the House under Paragraph 3 of the Xth Schedule, a split in the political party should have arisen, such a split must have caused its reaction in the Legislature Party also by formation of a group consisting of

\textsuperscript{216} (1992) 1 Gau. LR 356 (376).
\textsuperscript{217} Supra n. 22.
\textsuperscript{218} Ibid.
\textsuperscript{219} (1992) 1 Gau. LR 356 (382).
not less than one-third of the members of the Legislature Party. — *Mayawati vs. Markandeya Chand*\(^{221}\)

Any claim by the leader of the splinter or breakaway group that he has been elected leader of such group can be disposed of by the Speaker, only after the question of disqualification of the members of that group has been settled and their defence under Para 3 has been upheld. — *Parkash Singh Badal vs. Union of India*\(^{222}\)

**Split & Burden of Proof**

The burden to prove the requirements of Paragraph 2 is on the person who claims that a member has incurred the disqualification and the burden to prove the requirements of Paragraph 3 is on the member who claims that there has been a split in his original political party and by virtue of the said split the disqualification under Paragraph 2 is not attracted. — *Ravi S. Naik vs. Union of India*\(^{223}\)

**Legislature Party After a Split**

The faction consisting of not less than one-third members of the parent legislature party which was constituted as a sequel to the split arisen therefrom is also deemed to be a legislature party. — *Mayawati vs. Markandeya Chand*\(^{224}\)

**Original Political Party — Meaning of**

Political Party in clause (b) of sub-paragraph (1) of Paragraph 2 is none other than the 'Original Political Party' mentioned in Paragraph 3 and defined in Paragraph 1(c). — *Mayawati vs. Markandeya Chand*\(^{225}\)

**Leader of Legislature Party — Role of**

In a case of disqualification under Paragraph 2(1)(b) of Tenth Schedule, the involvement of the leader assumes importance in as much as condonation of violation of whips arises for consideration. In a case which attracts Paragraph 2(1)(a) or Paragraph 3 of the Tenth Schedule, his role does not assume such crucial significance. — *Zachilhu Khuzuano vs. State of Nagaland*\(^{226}\)

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\(^{221}\) Supra n.26.


\(^{223}\) Supra n.56.

\(^{224}\) Supra n.26.

\(^{225}\) Ibid

\(^{226}\) Supra n.22.
Paragraph 3 and Scope of Art. 226

Questions as to when a split can be said to have taken place, whether it is a one time transaction occurring at a fixed point of time or whether the expression can take within its ambit a series of connected or correlated events depend on the fact situation of each case, and can be well examined by the High Court under Art. 226 of the Constitution. — Laxman Jaidev Satpaty vs. Union of India

Interim stay against the Speaker’s Order of Disqualification — Effect of

The effect of the stay of operation of the order of disqualification dated December 13, 1990 in respect of two M.L.As of M.G. Party viz. Bandekar and Chopdekar was that with effect from December 14, 1990 the declaration that they were disqualified from being the members of Goa Legislative Assembly under the Speaker’s order dated December 13, 1990 was not operative, and on 24th December, 1990 i.e. on the date of the alleged split, it could not be said that they were not members of Goa Legislative Assembly.— Ravi S. Naik vs. Union of India

The action of the Speaker in ignoring the stay-order passed by the High Court, while passing his order dated 15th February, 1991 cannot be condoned on the view that in the absence of decision of the Supreme Court declaring Paragraph 7 as invalid, it was open for the Speaker to proceed on his own interpretation of paragraphs 6 and 7 of the Tenth Schedule and ignore the stay-order passed by the High Court — Ravi S. Naik vs. Union of India

The Speaker was bound by the stay-order passed by the High Court on 14th December, 1990 and any action taken by him in disregard of the said stay order would be a nullity. In the instant case, the Speaker’s order dated 15th February, 1991 treating Bandekar and Chopdekar as disqualified members in total disregard of the High Court’s stay order dated 14th December, 1990 was, therefore, held to be null and void.— Ravi S. Naik vs. Union of India

(d) Paragraph 4 :- Disqualification on ground of defection not to apply in case of merger

4. Disqualification on ground of defection not to apply in case of merger — (1)

A member of a House shall not be disqualified under sub-paragraph (1) of
paragraph 2, where his original political party merges with another political party and he claims that he and any other members of his original political party,

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

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such political party or new political party or group, as the case may be, shall be deemed to be the political party in which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the Legislature party concerned have agreed to such merger.

The expression 'merger' has not been defined in this Paragraph nor in Paragraph 1. Paragraph 4, like Paragraph 3, qualifies Paragraph 2 and may be read as a Proviso to the Paragraph 2. Though the expression 'merger' has not been defined in express terms, still the Paragraph prescribes the occasion when merger of two original political parties can take place. A situation appears to have been contemplated where a decision of two-thirds members of the Legislature party i.e. Legislative wing of a political party to merge with another political party, even though original Political Parties themselves might not have agreed outside the House.

It is not clear whether two-thirds of M.Ps/M.L. As of both the Political Parties should agree or what will happen when two-thirds of a Legislature Party already agreed to merge with another Legislature Party inside the House, but the Political Parties outside the House could not formalise or required time or one of them did not ultimately agree. Such confusion is going to be manifest more and more in near future.

Scope of Merger

Paragraph 4 does not expressly provide for any direct nexus between the original political party and the Speaker. In so far as the Legislative Assembly is concerned, the corresponding legislature party represents the original political party
and hence the requirement of agreement of two-thirds of the members— *W.K. Singh vs. Speaker, Manipur Legislative Assembly*\(^{231}\)

There may be different eventualities in respect of merger of a party. If the political party decided to merge with another political party, and the legislature party also abided by the decision and the members of the legislature party claimed to have become members of the political party into which their party merged, there would be no difficulty in holding the merger to have taken place under sub-para (1) of para 4 of the Schedule.

If the political party took a decision to merge but the legislature-party or at least more than one-third of the MLAs of the party did not agree to such merger, the political party cannot be deemed to have merged. But what will happen when the political party itself claims to have taken no decision for merger, but the legislature party or not less than two-thirds of its members agree to merge?

*W.K. Singh vs. Speaker, Manipur Legislative Assembly*\(^{232}\)

When not less than two-thirds of the members of a legislature party have agreed to a merger, the question whether their original political party should also be deemed to have merged may be pertinent. In the instant case, if the merger is held to have taken place, the four MLAs will not be visited with any disqualification; otherwise, they may be so visited.— *W.K. Singh vs. Speaker, Manipur Legislative Assembly*\(^{233}\)

Paragraph 1(b) in referring to the Legislative Party in relation to a member of a House belonging to any political party refers to the provisions of Paragraphs 2, 3 and 4, as the case may be, to mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paragraphs 2, 3 and 4, as the case may be.— *G. Viswanathan vs. The Hon'ble Speaker, T.N. Legislative Assembly*\(^{234}\)

**Expression "having agreed to such merger"— Import of**

The expression "having agreed to such merger" occurring in Paragraph 4(2) implies that the merger is to take place first at the party-level to which two-thirds of the members of the legislature party concerned are also required to agree, for such

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\(^{232}\) Ibid.
\(^{233}\) Ibid.
\(^{234}\) Ibid., n. 24.
merger to be effective insofar as they are concerned.— W.K. Singh vs. Speaker, Manipur Legislative Assembly. 335

(e) Paragraph 5 :- Exemption

5. Exemption: Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter rejoin that political party or become a member of another political party; or

(b) if he, having given up reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

Exemption under Para 5 — Scope of

The exemption under Paragraph 5 would be available where the Speaker in view of the high office of the Speaker on a question of propriety and to sustain the image of impartiality of that office, resigns from the membership of the political party to which he might have belonged prior to his election as Speaker. The circumstances in this case are such that appellant cannot avail of that exemption— Luis Prata Barbosa vs. Union of India. 336

Position of the Speaker under Tenth Schedule:

It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their

335 Supra n.67.
functions not in keeping with the great traditions of that high office.— *Kihoto Hollohan vs. Zachillhu* 287

(f). **Paragraph 6 - Decision on questions as to disqualification on ground of defection**

6. **Decision on questions as to disqualification on ground of defection**

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be 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 288.

### Constitutional Validity of paragraph 6

The provisions of Para 6(1) of the Tenth Schedule do not have the effect of excluding the jurisdiction of the High Court under Art. 226 or of the Supreme Court under Art. 136 of the Constitution, and, therefore, the paragraph did not require ratification under proviso to Art. 368 (2) of the Constitution.— *Purushot Singh Badai vs. Union of India* 289

Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid.— *Kihoto Hollohan vs. Zachillhu* 290

The finality clause in paragraph 6 does not completely exclude the jurisdiction of the courts under Arts. 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction.— *Kihoto Hollohan vs. Zachillhu* 290

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287 Supra n.14.
289 Supra n.14.
The contention that vesting of adjudicatory functions in the Speaker would vitiate the provision on the ground of likelihood of political bias is not tenable. — Mayawati vs. Markamdeya Chand

Scope of paragraph 6

A decision under paragraph 6(1) is not a decision of the House, nor is subject to the approval by the House. Therefore, a proceeding under para 6(1) before the Speaker or the Chairperson cannot be construed as a proceeding in the Parliament or the Legislature of a State. — *Kihoto Hollihon vs. Zachilhu*.

Order dt. 8/5/1986 passed by the Speaker of the Punjab Legislative Assembly, on an application filed by a splinter or breakaway group of the Shiromoni Akal Dal Legislature Party, recognising it as a separated party is not an order made under Para 6 of the Tenth Schedule. — *Parkash Singh Badal vs. Union of India*.

The power to resolve any dispute relating to disqualification, as vested in the Speaker or Chairman under the Tenth Schedule is a judicial power. — *Kihoto Hollihon vs. Zachilhu*. The Speakers and Chairpersons, while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are subjected to judicial review by High Court and Supreme Court. — *Kihoto Hollihon vs. Zachilhu*. The use of the word "final" qua any order passed by any authority under a provision of the Constitution or other statutes has always been understood to imply that no appeal, revision or review lies against that order and not that it overrides the power of judicial review, either of the High Court or of the Supreme Court under Art. 226 or Art. 136 of the Constitution, as the case may be. — *Union of India vs. Jyoti Parkas*, *Prakash Singh Badal vs. Union of India*.

The concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under Arts. 136, 226 and 227 of the Constitution insofar as infirmities based on violations of Constitutional mandates, malafides, non-compliance with Rules of Natural Justice and perversity are concerned. — *Kihoto*
Holohan vs. Zachilhu\textsuperscript{248}. The Speaker of Legislative Assembly has no power of review under the Tenth Schedule, and an order of disqualification made by him under Para 6 is subject to correction only by judicial review. \textit{Dr. Kushinath G. Jabmi vs. The Speaker, Legislative Assembly of Goa}\textsuperscript{249}

Disqualification Proceedings — Whether can be initiated suo motu by the Speaker:

Paragraph 6 is worded in such a manner as to comprehend also suo motu exercise of jurisdiction by the Speaker in initiating a disqualification proceeding—\textit{Banjak Phom vs. Thenachoo}\textsuperscript{250}

Question of Disqualification — Whether can be decided suo motu by the Speaker:

There is nothing in paragraph 6 or any of the other provisions in the Tenth Schedule to limit the jurisdiction of the Speaker to decide a question of disqualification only on a petition filed by a member of the House. There is nothing in these provisions to indicate that Speaker cannot act suo motu if the conditions requisite for disqualification come to his notice by some process or the other—\textit{Banjak Phom vs. Thenachoo}\textsuperscript{251}

Position of Speaker under the Tenth Schedule

The Speakers/Chairpersons hold a pivotal position in the Scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. It would indeed be unfair to the high tradition of that great office to say that the investiture in it of determinative jurisdiction under the Tenth Schedule would be vitiated for violation of a basic feature of democracy — Kihoto Hollohan vs. Zachilhu\textsuperscript{252}

Speaker’s Order — Validity of

Where an application was filed by a splinter group of the Shiromani Akali Dal Legislature Party, to consider and recognise it as a separate group, and the Speaker before passing his order recognising the splinter or breakaway group as a separate

\textsuperscript{248} Supra n. 14.
\textsuperscript{249} Supra n. 17
\textsuperscript{250} 1992 (1) Guwahati Law Reports 356 (372).
\textsuperscript{251} 1992 (1) Guwahati Law Reports 356 (372).
party, did not hear the original political party i.e. the Shiromoni Akali Dal Legislature Party or any other person interested in the matter, it was held that such an order would bind none, and in that sense the same was void ab initio. *Parkash Singh Badal vs. Union of India*\(^{253}\). Order of disqualification passed by the Speaker was challenged on the ground of malafides. On the facts and circumstances of the case, it is held that the order cannot be said to be vitiated by malafides. — *Zachilhu Khumantho vs. State of Nagaland*\(^{254}\)

Where more than one M.L.A. belonging to a particular political party were expelled from the party for defying the party whip, only the petitioner/ M.L.A. was declared disqualified by the Speaker, but not the others, it was held that their cases being different on facts on record, the decision of the Speaker was not violative of Art. 14 of the Constitution. — *Mahab Lai Singh vs. State of Bihar*\(^{255}\)

The petitioner-M.L.A. defied his Party’s whip by remaining absent in the House on the plea of illness, but when asked to show-cause as to why he should not be declared disqualified on the ground of defection, and given personal hearing by the Speaker, failed to produce any evidence or medical certificate in support of his claim. Held that his challenge to the order of disqualification as violative of the principles of natural justice is not tenable and there was no such violation. — *Mahab Lai Singh vs. State of Bihar*\(^{256}\). Having regard to the contents of the declaration, the failure of the petitioners to give any explanation before the Speaker, the failure to take a definite stand before the Speaker that they thereby had not voluntarily given up membership of their political party, it is held that the order of disqualification passed by the Speaker cannot be regarded as perverse. *Zachilhu Khumantho vs. State of Nagaland*\(^{257}\)

**Interim stay against the Speaker’s order of Disqualification — Effect of**

The effect of the stay of operation of the order of disqualification dated December 13, 1990 in respect of two M.L.A. As of M.G. Party viz Bandekar and Chodlekar was that with effect from December 14, 1990 the declaration that they were disqualified from being the members of Goa Legislative Assembly under the Speaker’s order dated December 13, 1990 was not operative, and on 24th December, 1990 i.e. on the date of


\(^{254}\) Supra n. 22.

\(^{255}\) AIR 1993 Pat. 96: 1993 (2) BLJR 1453.

\(^{256}\) Ibid.

the alleged split, it could not be said that they were not members of Goa Legislative Assembly. — Ravi S. Naik vs. Union of India

The action of the Speaker in ignoring the stay-order passed by the High Court, while passing his order dated 15th February, 1991 cannot be condemned on the view that in the absence of decision of the Supreme Court declaring Paragraph 7 as invalid, it was open for the Speaker to proceed on his own interpretation of paragraphs 6 and 7 of the Tenth Schedule and ignore the stay-order passed by the High Court — Ravi S. Naik vs. Union of India

The Speaker was bound by the stay-order passed by the High Court on 14th December, 1990 and any action taken by him in disregard of the said stay order would be a nullity. In the instant case, the Speaker’s order dated 15th February, 1991 treating Bandekar and Chopdekar as disqualified members in total disregard of the High Court’s stay order dated 14th December, 1990 was, therefore, held to be null and void. — Ravi S. Naik vs. Union of India

Speaker’s Power to Review — Scope of

It is not correct to say the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till 12th November, 1991 when the decision in the case of Kihoto Hollohon vs. Zachillhu was rendered, or at least a limited power of review inheres in the Speaker to correct any palpable error outside the scope of judicial review. — Dr. Kashinath G. Jalmi vs. The Speaker, Legislative Assembly of Goa

Any need for correction of errors in the Speaker’s order made under the Tenth Schedule can be met by the availability of judicial review against the same. — Kihoto Hollohon vs. Zachillhu, Dr. Kashinath G. Jalmi vs. The Speaker, Legislative Assembly of Goa

\[258\] Supra n. 56.
\[259\] Ibid.
\[260\] Ibid.
\[261\] Supra n. 14.
\[262\] Supra n. 17.
\[263\] Supra n. 14.
\[264\] Supra n. 17.
The existence of judicial review against the Speaker's order of disqualification made under Para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker in the Tenth Schedule, by necessary implication. — Dr. Kashinath G. Jalmi vs. The Speaker, Legislative Assembly of Goa

Judicial Review of Speaker's Order — Scope of

The scope of judicial review under Articles 13C, 226 and 227 of the Constitution in respect of an order passed by the Speaker or Chairperson under paragraph 6 would be confined to jurisdictional errors only. — Kibota Hollohon vs. ZachiUhu

Jurisdictional errors would include infirmities based on violation of Constitutional mandate, malafides, non-compliance with rules of natural justice and perversity. — Kibota Hollohon vs. ZachiUhu

Having regard to the Constitutional Scheme in the Tenth Schedule judicial review should not cover any stage prior to the making of a decision by the Speakers or Chairpersons, as the case may be, except in cases of interlocutory or suspensions which may have grave, immediate and irreversible repercussions and consequences— Kibota Hollohon vs. ZachiUhu

It is not every violation of every rule, which would call upon or require the court to strike down the order of a Tribunal like that of Speaker. Whether the order is to be struck down on the ground of violation of a Rule, depends on a host of circumstances, such as the nature and significance of the Rule the conduct of the Writ-petitioners, and prejudice caused to them etc. Having regard to all the circumstances, it is viewed that the final order of the Speaker is not liable to be quashed on this ground alone i.e. violation of Rule 7 of the Members of Nagaland Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986. — Zachidi Khasantho vs. State of Nagaland

Where an order of review was passed under the Tenth Schedule by the Speaker of the State Legislative Assembly reviewing the earlier order of

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265 Ibid.
266 Supra n.14.
267 Ibid.
268 Ibid.
disqualification against the Chief Minister and two other Ministers on the ground of defection, a writ-petition filed by a member of the Assembly questioning the Speaker's power of review, almost ten months after the date of the impugned order, was not liable to be dismissed merely on the ground of laches, particularly when the alleged usurpation of the public offices including that of the Chief Minister continued. — Dr. Kashinath Jami vs. The Speaker, Legislative Assembly of Goa 270

Moreover, the relief claimed by the Petitioner-M.L. As in their writ petitions before the High Court, being in the nature of a class-action, and seeking no relief personal to them, the writ-petitions should not have been dismissed by the High Court merely on the ground of laches. — Kashinath G. Jami vs. The Speaker, Legislative Assembly of Goa 271

While applying the principles of natural justice, it must be borne in mind that they are not immutable but flexible and they are not cast in a rigid mould and cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case. — Ravi S. Naik vs. Union of India 272

Judicial review in respect of an order passed by the Speaker or Chairman under para 6 of the 10th Schedule of the Constitution is held confined to jurisdictional errors only. — Keshab Gogoi vs. Speaker, Assam Legislative Assembly 273

If the impugned notice of the Speaker creates only an apprehension in the mind of the appellant-petitioner that a wrongful action is going to be taken against him under 10th Schedule to the Constitution and no decision has been taken by the Speaker causing the injury to the appellant-petitioner, judicial review will not be available against such wrongful action or injury apprehended by the petitioner-appellant. — Keshab Gogoi vs. Speaker, Assam Legislative Assembly 274

It is primarily the jurisdiction of the Speaker to go into the question whether a member of the Legislative Assembly is disqualified under the Anti-Defection Laws and the decision of the Speaker, if any, can only be challenged in High Court under

271 Ibid.
272 Ibid n.56.
273 Ibid n.23.
274 Ibid.
Arts. 226 and 227 of the Constitution on limited grounds—_Majji Dharma Rao vs. Ganta Sivarama Krishna_.

In case of expulsion of a member of a political party from such party on the ground of anti-party activity, the dispute relates to intra-party discipline and right of a member to go against the party-whip and wishes of the party to which he belonged, and therefore, it can not be a subject-matter of any writ-petition.—_Dr. M. Mohan Babu vs. Chief Election Commissioner, EC. of India_.

**Exercise of Discretion in entertaining a delayed Writ-petition**

Circumstances for

The exercise of discretion by the court even where the application is delayed is to be governed by the objective of promoting public interest and good administration, and on that basis it cannot be said that discretion should not be exercised in favour of interference by way of a Writ-petition under Art. 226, where it is absolutely necessary to prevent continuance of usurpation of public office or perpetuation of an illegality, as in the present case. —_Dr. Kasinath G. Jalmi vs. The Speaker, Legislative Assembly of Goa_.

**Non-awarding of costs — Relevant considerations for**

_The motive or conduct of the members in such a situation can be relevant only for denying them the costs, even if their writ-petition and the claim therein succeed._ —_Dr. Kasinath G. Jalmi vs. The Speaker, Legislative Assembly of Goa_.

**Irregularity in procedure — Effect of**

As long as irregularity of procedure does not amount to violation of an essential principle of natural justice, it cannot be used as a ground to challenge the validity of the disqualification-proceedings before the Speaker—_Zachaihu Khiasantho vs. State of Nagaland_.

When a certain procedure is required by the Disqualification Rules to be adopted for giving effect to the provisions of the Constitution, the non-adoption of the

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277 Supra n.17.
278 Ibid.
procedure cannot be side-lined altogether as a mere procedure and of no consequence. — Mayawati vs. Markandeya Chand

Where the two MLAs expelled by their Party President and later declared "unattached" by the Speaker did not challenge the order of expulsion or the order of the Speaker declaring them unattached, the writ-petitioners other than those two MLAs are not entitled to challenge the same collaterally in these proceedings under Art. 226. — Bathak Phom vs. Thenacho

A plea not taken before the Speaker cannot be taken before the High Court in a writ-proceeding. When the omission as regards verification of Annexures to the petition seeking disqualification of certain MLAs was not pleaded before/the Speaker, nor was noticed by the Speaker, and nor even noticed in the writ-petition as no ground in this respect was taken in the writ-petition, it was held that the order of the Speaker could not be interfered with under Art. 226 on the ground of alleged omission of verification of the Annexures to the Petition of disqualification.— Zachilhu Khusanho vs. State of Nagaland

Perversity — Meaning of

In any event, merely because there is a delay in concluding the hearing by the Speaker, his order cannot be said to be perverse — Mayawati vs. Markandeya Chand

Unreasonableness — Meaning of

It is frequently used as a general description of the things that must not be done. For instance a person entrusted with a discretion must direct himself properly in a law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matter that he has to consider. If he does not obey these rules, he may truly be said, and often is said, to be acting "unreasonably".— Associated Provincial Picture Houses Ltd. vs. Wednesbury Corporation.

282 Supra n.22.
283 Supra, n.26.
284 (1947) 2 All 680; (1948) 1 KB 223.
It applies to a decision which is so outrageous in its defence of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. \textit{CCSU vs. Minister for Civil Service}\textsuperscript{285}

To arrive at a decision on 'reasonableness', the court or the authority has to find out if any relevant factors have been left out or any irrelevant factors have been taken into account. A decision to be reasonable should be within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principle, and should be a bonafide one. \textit{Union of India vs. G. Ganguly}\textsuperscript{286}

\textbf{Sub-Paragraph (2) — Scope of}

The deeming provision contained in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in Art. 122(1) and 212(1) of the Constitution as understood, and explained in \textit{Keshav Singh’s case reported in} (1965) 1 SCR 413 : AIR 1963 SC 745 to protect the validity of proceedings from irregularities of procedure, but confined the scope of such immunity only to the proceedings only in Parliament or in the Legislature of a State, as the case may be. \textit{—— Kihato Hollahon vs. Zachillhu}\textsuperscript{287}

Validity of the proceedings inside the Legislature of a State cannot be called in question on the allegation that the procedure laid down by the law had not been strictly followed. No court can go into those questions which are within the special jurisdiction of the Legislature itself, which has the power to conduct its own business. \textit{M.S.M. Sharma vs. Dr. Shree Krishna Sinha}\textsuperscript{288}

\textit{The High Court has no jurisdiction to entertain a writ-petition under Art. 226 to decide the legality of a proceeding in the Legislature of a State. — Saradakar Supakar vs. Speaker, Orissa Legislative Assembly}\textsuperscript{289}; \textit{Gudavali Misra vs. Nandakisore Das}\textsuperscript{290}; \textit{Surendra Mohanty vs. Nabakrishna Choudhury}\textsuperscript{291}

As the Speaker has not yet taken a final decision and has merely referred the matter of disqualification to the Committee of Privileges for enquiry and report, on the receipt of which only he would take a final decision, and the Committee is yet to

\textsuperscript{285} (1984) 3 All ER 935.
\textsuperscript{287} Supra n. 14.
\textsuperscript{288} AIR 1969 SC 1186.
\textsuperscript{289} AIR 1952 Orissa 234
\textsuperscript{290} AIR 1953 Orissa 111
\textsuperscript{291} AIR 1956 Orissa 168.
conclude its proceeding, the present writ-petition is held as premature and not maintainable on this ground alone. — Bhajanab Bohera vs. Speaker, Orissa Legislative Assembly

The Disqualification Rules framed under Paragraph 8 of the Tenth Schedule are procedural in nature, and any violation of the same would amount to an irregularity in procedure, which is immune from judicial scrutiny in view of subparagraph (2) of Paragraph 6. — Ravi S. Naik vs. Union of India

(g) Paragraph 7- Bar of jurisdiction of courts

7. Bar of jurisdiction of courts

Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

Constitutional Validity

Para 7 the Tenth Schedule to the Constitution has the effect of excluding the jurisdiction of the Supreme Court as well as the High Court under Art. 136 and 226 respectively in regard to any matter connected with the disqualification of a member of a House under the said Schedule. — Parkash Singh Badal vs. Union of India

As the Constitution (52nd Amendment) Act introducing para 7 of the Tenth Schedule was not got ratified by one-half of the State in terms of the Proviso to clause (2) of Art. 368, the same is ultra vires and unconstitutional. — Parkash Singh Badal vs. Union of India

However, the whole of the Constitution (Fifty Second Amendment) Act, 1985 would not be liable to be struck down because of Para 7 having been declared unconstitutional. —Parkash Singh Badal vs. Union of India

Even if the provisions of Para 7 are omitted having been held ultra vires the Constitution, it would not affect the working of the other provisions of the Tenth Schedule and the only effect would be that the order of the Speaker would become amenable to the jurisdiction of the Supreme Court and the High Court under Arts. 136 and 226. — Parkash Singh Badal vs. Union of India

292 AIR 1990 Orissa 18 (FB).
293 Supra n.56.
295 Ibid.
296 Ibid.
In view of non-compliance with the Proviso to Art. 368(2), it is not correct to say that not only Paragraph 7 but also the entire Bill resulting in the Constitution (Fifty-Second Amendment) Act, 1985 stands vitiated and becomes invalid, as because, the doctrine of severability would apply to such case. — Kihoto Hollohon vs. Zachi Uhu.\textsuperscript{397}

Para 7 of the Tenth Schedule requiring ratification under Proviso to Art. 368(2) of the Constitution was not ratified. However, by applying the doctrine of severability, it may be said that Paragraph 7 of the Schedule contains a provision which is independent of, and stands apart from the main provisions of the Tenth Schedule, which are intended to provide a remedy for the evil of unprincipled and unethical political defections, and, therefore, is a severable part. — Kihoto Hollohon vs. Zachi Uhu.\textsuperscript{398}

The remaining provisions of the Tenth Schedule, other than Paragraph 7, can and do stand independently of the Paragraph 7 and are complete in themselves, workable and are not truncated by the excision of Paragraph 7. Therefore, the remaining provisions of the Tenth Schedule are held not unconstitutional due to non-ratification of Paragraph 7. — Kihoto Hollohon vs. Zachi Uhu.\textsuperscript{399}

The effect of non-compliance with the proviso to Article 368 (2) invalidates Paragraph 7 alone, and the other provisions which by themselves do not attract the Proviso, do not become invalid. — Kihoto Hollohon 1/5. Zachi Uhu.\textsuperscript{400}

The decision of the Supreme Court in Kihoto Hollohon vs. Zachi Uhu declares the law i.e., invalidity of Paragraph 7, inter alia, as it was on the date of the coming into force of the Constitution (Fifty-Second Amendment) Act, 1985. - Ravi S. Naik vs. Union of India.\textsuperscript{401}

(h) Paragraph 8-Rules

8. Rules

(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the

\textsuperscript{397} Supra n.14.
\textsuperscript{398} Ibid.
\textsuperscript{399} Ibid.
\textsuperscript{400} Ibid.
provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(b) the report which the leader of a Legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of subparagraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished, and

(d) the procedure for deciding any question referred to in subparagraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under subparagraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved they shall be of no effect.

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.
Scope of paragraph 8

The Disqualification Rules cannot be read in isolation from the provisions of the Xth Schedule; instead they must be read as part of it — _Mayawati vs. Markandeya Chand_ 304

It is desirable that every Speaker should fix a time-schedule in the relevant Rules for disposal of the proceedings for disqualification of M.L.As or M.Ps. All such proceedings should be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken to file. — _Mayawati vs. Markandeya Chand_ 305

The contention that violation of Disqualification Rules framed by the Speaker under Para 8 of the Tenth Schedule amounts to violation of Constitutional mandates is not tenable. — _Ravi S. Naik vs. Union of India_ 306

Mere violation of any provision of a Disqualification Rule is not enough to constitute violation of the provisions of the Xth Schedule. — _Mayawati vs. Markandeya Chand_ 307

However, by virtue of sub-paragraph (3), any wilful violation of any provisions of such Rules would amount to a breach of privilege of the House and would be dealt in the similar manner.

Defection Rules of States

On the Members of Assam Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986 — Procedure of

Before making a petition against any member under 10th Schedule to the Constitution, the person making such petition shall have to satisfy himself that a question has arisen as to whether such member has become subject to disqualification under the 10th Schedule. If the person is satisfied, he may file a petition as provided under sub-rules (1) and (2) of Rule 6 of the Members of

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304 Supra n. 13.
306 Supra n. 56
307 Supra n.28.
Assam Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986. *Keshab Gogoi vs. Speaker, Assam Legislative Assembly*  

**Rule 6**

The concise statement as contemplated in Rule 6 of the Members of Assam Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986 and supporting documents and gist of statement of witness should show prima facie that the member concerned has voted or abstained from voting in the House contrary to any direction issued by the Political Party to which he belongs without obtaining prior permission of the political party. Of course, if such voting or abstention has been condoned by any political party within 15 days from the date of such voting or abstention, no action can be taken. *— Keshab Gogoi vs. Speaker, Assam Legislative Assembly*  

A petition seeking disqualification of any member under 10th Schedule should strictly comply with requirements of Rule 6(5) of the Members of Assam Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986 i.e. must contain a concise statement of material facts on which the petitioner relies and must be accompanied with copies of documentary evidences, if any, and the information, if received, by the petitioner from any other person, a statement containing name and address of such person and gist of such information as furnished by each such person. *— Keshab Gogoi vs. Speaker, Assam Legislative Assembly*  

On receipt of a petition under rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule viz. rule 6. Such consideration means that Speaker has to apply his mind and think over the matter. While doing so, the first consideration is whether the concise statement of material facts in the petition as mentioned in clause (a) of sub-rule (5) of rule 6 discloses a case under

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268 Ibid.
clause (b) of sub-para (1) of Para 2 of the 10th Schedule.— *Keshab Gogoi vs. Speaker, Assam Legislative Assembly* 309

**On Bihar Vidhan Sabha (Disqualification of Members on the grund of Defection) Rules, 1986 — Rule 3**

The M.L.A. remained absent in the House in defiance of his Party’s Whip on the ground of illness, but failed to file any application before the Speaker under Rule 3(6) of the Bihar Vidhan Sabha (Disqualification on the Ground of Defection) Rules, 1986 for condonation of his absence. Under the circumstances of the case, the order of disqualification passed by the Speaker against him was proper.— *Mahab Lai Singh vs. State of Bihar* 310

**Rule 8**

Power of the Speaker to declare an M.L.A. as disqualified is independent and not under command or control of any party-leader or Chief Whip or any other authority. — *Mahab Lai Singh vs. State of Bihar* 311

**On Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986**

The Disqualification Rules are procedural in nature and any violation of the same would only amount to an irregularity in procedure which is immune from judicial scrutiny.— *Ravi S. Naik vs. Union of India* 312

**Rules 3 & 4**

A failure to prove the split cannot be held merely because no intimation about the split had been given to the Speaker in compliance with Rule 3 or 4 of the Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986.— *Ravi S. Naik vs. Union of India* 313

**Rule 7 (3)(b) :**

The allegation of non-compliance of Rule 7(3)(b) of the Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 regarding

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309 Ibid.
310 ATR 1993 Pat. 96: 1993 (2) RLJR 1453.
311 Ibid.
312 Supra n.56.
313 Ibid.
forwarding of comments of the member to the Speaker within seven days was not sustainable because though the appellant-member had been given only two days time, he had submitted his detailed reply within that period and therefore, denial of adequate opportunity cannot be alleged on the ground of grant of insufficient time. Other allegations like consideration of extraneous materials and circumstances by the Speaker, or denial of opportunity to adduce evidence are without substance, and therefore, the Speaker's order of disqualification was not in violation of the principles of natural justice too — Ravi S. Naik vs. Union of India314

On the Members of Nagaland Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986

No rule-making authority can make Rules in derogation of the provisions of the statute which confers power on the authority. Rules cannot override the statute. The duty of the court is always to endeavour to bring about a harmony between the provisions of the statute and the provisions of the Rules and if that is not possible, the Rules must give way to the provisions of the statute — Banjak Phom vs. Thenucho315

Rule 6 — Scope

Rule 6 does not and cannot have the effect of taking away the suo motu power of the Speaker. Rule 6 and the succeeding Rules referring to petition being filed by a Member of the House lay down procedure where a member of a House seeks to invoke the jurisdiction of the Speaker and cannot detract from the suo motu power of the Speaker. — Banjak Phom vs. Thenucho316

Rules 6(6) and 6(7)

Signing and verification of the petition seeking for disqualification, with annexures required under sub-rules (6) and (7) of Rule 6 of the Rules are to be

314 Ibid.
done in the manner as laid down in the Code of Civil Procedure — Zuchilhu Khusanrao vs. State of Nagaland\textsuperscript{317}

A careful reading of Rule 7(3) would show that the Speaker is not compelled to issue any notice at all. All that is required to do is to forward a copy of the petition with annexures. Thereupon it is open to the member to submit comments within seven days of the receipt of the copy of the petition with annexures. — Zuchilhu Khusanrao vs. State of Nagaland\textsuperscript{318}

Review

The Constitution (Fifty-second Amendment) Act changed four Articles of the Constitution, 101(3)(a), 102(2), 190(3)(a) and 191(2), and added the Tenth Schedule thereto. This Amendment is often referred to as the anti-defection law.

Under Art. 102(2), a person is disqualified to be a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Under Para 2 of the X Schedule, if a member voluntarily gives up his membership, or totes or abstains from voting, in the House against the direction issued by the party on whose symbol he or she was elected, then he or she would be liable to be disqualified from membership.

Under Para 3, no disqualification is incurred in cases where a split from, or merger of, a party in, another party is claimed. In the event of a split, at least one-third of its members must side to quit or break away. In the case of a merger, the decision should have the support of not less than two-thirds of the party members.

Paragraph 3 of the Tenth Schedule clearly states that from the time of the split, the breakaway faction will be deemed to be a separate political party for purposes of the anti-defection law. All that the Speaker is required to do is to ascertain whether the group consists of not less than one-third of the members of the legislature party. If this requirement is fulfilled, the Speaker is bound to hold that the members concerned cannot be disqualified.

\textsuperscript{318} Ibid.
The question of disqualification under Sch. X is to be determined by the Speaker of the Lok Sabha, or the Chairman of the Rajya Sabha, as the case may be, but he is to take notice of an alleged defection not supinely, but only when a petition in writing is received from a member. Para 6 of the Xth Schedule renders the decision of the Speaker as final.

Under para 7 of the Schedule, no Court has jurisdiction to decide the question of disqualification of a member of a House under Sch. X.

Para 8 authorizes the Chairman/ Speaker of a House to make rules for “giving effect to the provisions of Schedule X. Rule 7(7) provides that the procedure to be followed by the Speaker shall be the same as adopted in privilege cases by the Committee of Privileges. A reasonable opportunity must be allowed to the member against whom a complaint has been made to represent his case, and to be heard in person. At times, the Speaker may refer a case of defection to the Committee of Privileges for inquiry. This process takes quite some time and, therefore, defection does not have any immediate effect. The jurisdiction of the courts is barred in matters connected with the disqualification of members.