CHAPTER-4

DISQUALIFICATION, SPLIT AND MERGER: A STUDY OF SOME PROMINENT CASES IN STATE LEGISLATURES

"The election promises and pledges held out to the electorate at the time of election have to be maintained. Any deviation of the same would amount to betrayal of the electorate. The tenth schedule is to maintain the purity of the House."  

1. Introductory

The Anti-Defection law was expected to put an end to the evil of unprincipled defections. However, since the Constitution Amendment\(^{411}\) came into force, there have been many more cases of defection from various parties in different State Legislatures. Some of things that happened were bizarre, to say the least. Notwithstanding the Anti-Defection Law, some of the Governments, inter alia, in Nagaland, Mizoram, Andhra Pradesh, Tamil Nadu, Pondicherry, Manipur, Arunachal Pradesh, Goa, Gujarat, Meghalaya and Sikkim were brought down through defections.\(^{412}\) There were problems under the Anti-Defection Law in several other States as well, as in Madhya Pradesh, Orissa, Maharashtra, Bihar, Karnataka, West Bengal, Delhi, Kerala, Uttar Pradesh, Punjab, Himachal Pradesh, Haryana and Rajasthan. There were reports even in the new States of Chhattisgarh and Jharkhand. Four defectors were made Ministers in the last week of January, 2002. No particular party or state could be blamed, as they all behaved according to a very similar pattern.

\(^{410}\) View of Karnataka High Court c.f. "Anti Defection Law: A Voter’s right to Redress", Times of India, 24 April 2011. To understand the full import of the emphatic ruling, I quote from the judgment:"Tenth schedule nowhere restricts filing of a complaint seeking disqualification by a voter of that particular constituency. Tenth schedule nowhere contemplates that the complaint of disqualification would be moved only by member of the House."

\(^{411}\) The Constitution (Fifty-second Amendment) Act, 1985


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The irresponsible manner in which some of the Speakers and Governors exercised their powers brought disgrace to their high offices and sometimes led to the brink of open confrontation with the judiciary. The latter also did not always show the necessary judicial restraint or sense of responsibility to the people at large. In this chapter, an endeavour has been made to compile and analyze the cases of defection in Indian States.413

2. Defections in Indian States

It is interesting to note that no defection, party split or merger took place in the Jammu & Kashmir Legislative Council during 1993-2001 or during 2002-2007. However, during 2008-2009 three Members of the Legislative Council of J&K were disqualified from membership on ground of defection, under the J&K State Constitution. The Jammu & Kashn-iir Assembly remained dissolved during 1993-96 but later during 1996-2001 or 2002-2009 also no case was reported.

In Tripura there has been no case under the Tenth Schedule. In Maharashtra, so far no case has been decided either by the Presiding Officers or by Courts. There have, of course, been several cases of claims of splits and mergers.

(i) Andhra Pradesh

In Andhra, C. Ramachandra Reddy who was elected a member of the Andhra Pradesh Legislative Assembly as an Independent was declared disqualified on 7 May, 1987 for having contested Zila Parishad elections on Congress Ticket414. The Speaker held that he was satisfied that Reddy had joined a political party (Congress-I) thereby attracting the provisions of para 2(2) of the Seventh Schedule of the Constitution. The

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413 For a detailed study please refer to G.C. Malhotra: Anti Defection Law in India and the Commonwealth, Publisher: Metropolitan Book Co. Pvt. Ltd., (2005). Price: 2400/- The study deals with the genesis of the Anti-defection Law and gives an overview of the law and experience of the world parliaments, particularly in the Commonwealth. It gives an account of the cases of Anti-defection Law in the Parliament and the State legislatures in India and includes six important judicial pronouncements related to anti-defection. Published on behalf of the Lok Sabha Secretariat, this book consists of five chapters. Chapter 1 deals with the Genesis of the Law; Chapter 2 contains an overview of the Laws and experience of the World Parliaments, particularly of the Commonwealth which is followed by country summaries in Chapter 3. Chapter 4 gives an account of the cases of Anti-defection Law in the Parliament and the State Legislatures in India and includes six important judicial pronouncements relating to anti-defection cases; Chapter 5 marks an appraisal of the working of the law in India.

414 Andhra Pradesh Gazette, Extraordinary, dt. 7th May, 1987
Speaker refused to wait for the disposal by the High Court of Reddy’s application challenging the validity of proceedings before him.\footnote{Sh. Reddy Challenged the decision in the High Court which stayed the order of the Speaker. Later, consequent upon the dissolution of the Assembly Court dismissed the petition.}

On 19 November, 1994, twenty-one Congress members including nine sitting MLAs were expelled from the party for six years for contesting against official candidates.

On 20 November, 1994, NT Rama Rao announced in Vijayawada the expulsion of fifteen TDP leaders for contesting as independents against the official party nominees.

On 19 May, 1995, the Chief Minister of the ruling TDP, NT Rama Rao readmitted five Legislators who had won as independents in the December 1994 Assembly elections after defying the party. Rama Rao said that these MLAs would function as associate members of Telugu Desam Legislature Party (TDLP). The MLAs were: Thota Trumurthulu, G. Rammohan, J. Venkat Reddy, E. Krishna Reddy and M. Mallesh.

On 25 August, 1995, a vertical split occurred in TDP with 163 TDP MLAs rallying behind Chandrababu Naidu in the 292 member House. Subsequently on 26 August the Governor Krishan Kant asked the Chief Minister NT Rama Rao to seek a vote of confidence on the floor of the House by 30, August. Earlier on 25 August, the Speaker Y. Ramakrishnudu certified the genuine signatures of 163 Legislators who had revolted against the Chief Minister and elected Naidu as their leader.\footnote{http://www.wikipedia.org}

On 1 September 1995, Naidu was sworn in as the Chief Minister of the 11 member ministry and on 7 September Naidu won the confidence vote in the Legislative Assembly by 227 votes to nil.

On 10 October, 1995, the Telugu Desam Parliamentary Party (TDPP) leader D Venkateshwsara Rao along with 16 MLAs including Deputy Speaker defected to NT Rama Rao. Subsequently, on 12 October Vadde Shobhanadreshwar Rao was elected the leader of TDPP.
On 30 November, 1995, NT Rama Rao announced the expulsion from the primary membership of 158 TDP Legislators, who had defected to Naidu after the vertical split in TDP in August.

On 22 January, 1996, Laxmi Parvathi, NT Rama Rao’s widow was unanimously elected as a new President of TDPP owing alliance to NTR. Rama Rao’s elder son-in-law arid TDP MP Daggubati Venkateswara Rao was chosen as the working President of the party.

On 17 March, 1996, by a resolution adopted at the executive meeting of the party, it was decided to rename the party as ‘NTR TDP’. The Election Commission on 31 March observed that the suffix Laxmi Parvathi be added to the name of NTR TDP so that the party can be identified without confusing with the TDP.

On 16 May, 1996, due to irreconcilable differences with President Laxmi Parvathi, the working president of TDP NTR Venkateshwarao resigned from the party.

On 20 May, 1996, the Telugu Desam Party (NTR) headed by Laxmi Parvathi vertically split when 13 of the 28 members in the Legislature party joined the ruling TDP of Chief Minister Chandrababu Naidu. After the split the strength of TDP (NTR) was reduced from 28 to 15.

(ii) **Arunachal Pradesh**

On 25 February, 1991, the Speaker of the Arunachal Pradesh Legislative Assembly recognised with effect from 18 February, 1991 that seven members of the Janata Dal Legislative Party—their number being not less than two-thirds of the members of the Dal—had merged with the Congress(I) Legislature Party\(^{417}\).

The Speaker’s decision was challenged by seven separate petitions filed to seek the disqualification of all the seven Janata Dal members for having voluntarily left their party and thereby becoming subject to disqualification. Four of the seven members were expelled by the Janata Dal State Unit President on 19 and 21 February, 1991 and the Speaker was requested to disqualify the other three as they did not constitute the one-third or two-third to qualify for a split or merger. Even the expelled four were required to be disqualified for having joined the Congress in the face of

\(^{417}\) The Arunchal Times, June 25, 2010, Also visit www.arunchaltimes.com
expulsions. By his decision of 1 July, 1991, the Speaker held that his earlier decision was absolute and not liable to be questioned. The Speaker held: (i) the Rules—Rule 3(7)—laid down a limitation of 10 days within which “voluntarily giving up of membership” has to be reported and failure to do so would render any action on that score void as time barred. (ii) the word ‘resignation’ may be coterminous with the word ‘split’ and “cannot be inferred as tantamounting to voluntarily giving up membership” of the party particularly when the members concerned have categorically expressed their collective decision of merging up with another party. (iii) resignation or giving up the membership of a party by a group of members with the objective of merger with another party would be protected under para 4 of Schedule 10 of the Constitution provided the requirement of the group not being less then two-third of the membership of the party is satisfied.

On 22 November, 1991, the Speaker recognised the merger of the Janata Legislature Party with its lone member with the Congress (I) Legislature Party. On 20 December, 1991, the Speaker accorded recognition to the merger of three Janata Dal members in Congress (I). Again on 20 August, 1992 the merger of the remainder one member Janata Dal Legislature Party with Congress (I) was recognised\textsuperscript{418}.

On 2 September, 1996 two members of the Janata Legislature Party namely Tapi Batt and Bida Taku of the Arunachal Legislative Assembly, merged their party with the Congress. Since the two members constituted the entire Legislature Party the Speaker on 19 September, 1996, by an order, recognised the merger and the Congress as their original party under the Tenth Schedule to the Constitution.

On 20 September, 1996, 40 members of the Congress (I) of the Arunachal Pradesh Legislative Assembly split and formed the Arunachal Congress. The Speaker taking into consideration the fact that the split members constituted not less than 1/3rd of the members of the original legislature party recognised the split and the newly formed Arunachal Congress as their original party under the provisions of the Tenth Schedule to the Constitution. The same day, Arunachal Chief Minister, Gagong Apang quit the Congress Party and formed a regional outfit—Congress Arunachal—which he claimed enjoyed the support of a majority of members in the State Assembly with 51 MLAs of the 60 member State Assembly. The Governor, while accepting the

\textsuperscript{418} Ibid.
resignation of Apang, requested him and his cabinet colleagues to continue as a caretaker ministry till a new government was formed\textsuperscript{419}.

Apang had been the Congress Chief Minister of the State since 1980 and was holding the fourth consecutive term. He took the decision of breaking away from the party to protect against what he considered to be increasing interference of the Congress President in State matters. The decision of the Central leadership to remove the Pradesh Congress President unilaterally had accentuated the problem\textsuperscript{420}.

On 5 March, 1997, Chowna Mein belonging to the Janata Dal Legislature Party joined Arunachal Congress. A petition was also submitted to the Speaker by the leader of Arunachal Congress on dated 7 March, 1997, along with the endorsement of the President, Arunachal Congress requesting the induction of Chowna Mein in the party. The Speaker by his order dated 10 March, 1997, under the provisions of the Tenth Schedule to the Constitution recognised the split in the Janata Dal and accepted the induction of Chowna Mein in the Arunachal Congress.

On 15 October, 1997, Takam Sanjoy, MLA spilt from the Janata Dal Legislature Party and joined Arunachal Congress. A petition was also submitted by the leader of the Arunachal Congress Legislature Party on 25 October, 1997, along with the endorsement of the President of Arunachal Congress requesting the induction of Takam Sanjoy to the Arunachal Congress Legislature Party. The Speaker by his order dated 6 November, 1997 recognised the split and accepted the induction under the Tenth Schedule to the Constitution.

On 26 May, 1998, L. Wanglat and Changkom Hondik, left the Congress Legislature Party and joined the Arunachal Congress. A petition was submitted by the leader of the Arunachal Congress Legislature Party with the endorsement of the General Secretary, Arunachal Congress requesting induction of L. Wanglat, and C. Hondik to the Arunachal Pradesh Legislature Party. The Speaker on 27 May, 1998, recognised the split and the subsequent merger of both the members to the Arunachal Congress Legislature Party.

On 5 August, 1998, the sole member of Janata Dal legislature party, T.C. Teli who by himself constituted the entire legislature party of Janata Dal, also merged with

\textsuperscript{419} Frontline, volume 16, Issue 22, Oct. 23 – Nov. 5, 1999 See also Arunachal Times 10 Dec. 2010

the Congress. The Speaker recognised the merger under the provisions of the Tenth Schedule to the Constitution\textsuperscript{421}.

On 12 January, 1999, 24 members of the Arunachal Congress Legislature Party split and formed a separate group called Arunachal Congress(M). The split members constituted not less than one-third of the members of the Arunachal Congress Legislature Party. The Speaker on the very day recognised the split and the newly formed group as the political party to be known as Arunachal Congress (M)\textsuperscript{422}.

On 19 January, 1999, seven members of the Arunachal Congress Legislature Party split and formed a distinctive group to be called Arunachal Congress (T). The Speaker recognised the split in the original party, the Arunachal Congress as the split members constituted the required 1/3rd members. He also recognised the newly formed group as a separate political party under the provisions of the Tenth Schedule to the Constitution\textsuperscript{423}.

On 5 February, 1999 the Speaker by his decision recognised the split in the Arunachal Congress (T) Legislature Party that comprised of six members of the party and their subsequent merger in the Arunachal Congress (M) under the provisions of the Tenth Schedule to the Constitution.

On 12 February, 1999, the sole member of the Arunachal Congress(T) Legislature Party Kalikho Pul who by himself constituted the entire Legislature party merged with the Arunachal Congress(M). The Speaker by his decision recognised the merger under the provisions of the Tenth Schedule to the Constitution\textsuperscript{424}.

On 10 April, 1999, 31 members of the Arunachal Congress Legislature Party, who by themselves constituted the entire legislature party merged with the Congress Legislature Party. The Speaker by his decision recognised the merger under the provisions of the Tenth Schedule to the Constitution\textsuperscript{425}.

On 13 December, 1999, two members of the Nationalist Congress Legislature Party, namely, Atum Welly MLA, and Jotom Toko Takam MLA, left the party and

\textsuperscript{421} Ibid p. 22
\textsuperscript{422} Kayan Chaudhary, A. defection drama, Frontline Volume 20, Issue 17, Aug. 16-29, 2003.
\textsuperscript{423} Supra Note 7
\textsuperscript{424} Ibid.
\textsuperscript{425} Ibid.
formed a separate group known as Nationalist Congress Party (A). The Speaker on 15 December, 1999, recognised the split and the newly formed group as a separate party.

On 17 December, 1999, Atum Welly and J.T. Takam of the Nationalist Congress Party (A) merged with the Congress Legislature Party. The Speaker by his decision recognised the merger under the provisions of the Tenth Schedule to the Constitution.

On 25 July, 2000, two members Wangki Lowang and Anok Wangsa of the Nationalist Congress Legislature Party, who by themselves constitute the entire Legislature party merged with the Congress party. The Speaker recognised the merger.

On 24th July, 38 members belonging to the Indian National Congress which had a strength of 56 members in the house, claimed split in the original party and formation of a separate group namely congress (D). The speaker held that this group of members. Shall be known as congress (D) for the purpose of sub paragraph (1) of the paragraph 2 of the Tenth Schedule426.

On 26 August 2003, 31 members belonging to Congress (D) Legislative party which had a strength 38 members in the house made a claim of merger with BJP which way allowed by speaker on 28 August, 2003427.

On 29 August Sh. Geogra Geogon Apang the lone member belonging to Arunachal Congress legislature party made a claim of merger with BJP which was allowed by speaker on same day i.e. 29 August, 2003428.

On 14 Nov. 2003 out of 7 members of Congress (D) made a claim of merger with BJP which was allowed on same day i.e. 14 November, 2003429.

On January 30, 1986 Sh. Santi Ranjan Das Gupta and 14 other MLAs belonging to the United Minorities Front (UMF) party in the assembly gave a petition to the speaker for disqualification of six independent MLAs for having joined a political party i.e. the Assam Gana Prasid (AGP). Petition disallowed on ground that AGP was not a political party at the time when respondent joined it430.

427 Ibid.
428 Ibid.
429 Ibid.
430 Sarvashri Sahil Chaudhary, Saruj Haq, Joy Prakash, Khorsing Engti, Hariram Tewang and Samsing Hanse
On 8 Aug Sh. Abdul Jabbar, MLA gave a petition to the speaker against Sh. Shanti Rajan Das Gupta and 7 others MLAs praying for disqualification under para 2 (1) of the tenth Schedule to the constitution for having voluntarily given up the membership of their original party i.e. UMF party which was allowed by speaker and respondents were disqualified.\(^{431}\)

On 14 June speaker allowed the claim of split in All India Congress (Tiwari) by one of total 2 MLAs.\(^{432}\)

On 14 June speaker allowed merger of a new group ALC (Tiwary) with Assam Gana Prishad on a petition filed by Sh. Ali Akbar Miah on 29 July, 1996. Speaker allowed merger of All Indira Congress (Tiwari) with INC on 19 March, 1997 on a petition filed by Shri small Hussain.\(^{433}\)

(iii) Bihar

On 9 November, 1990, the President of the Janata Dal, on the recommendation of Laloo Prasad, leader of the Janata Dal in the Bihar Assembly, expelled 10 M.L.As (Raghuriath Jha and others) from the Janata Dal. At the request of Laloo Prasad, these ten expelled members were declared ‘unattached’ on 10 November, 1990. On 18 November, 1990 the Janata Dal President informed the Speaker that he had revoked his earlier decision in respect of two of the 10 members. However, after giving an opportunity to all the other eight members also to be heard inasmuch as there was no provision for expulsion in the Tenth Schedule, the Speaker found no option but to confirm the ‘unattached’ status. They could not be disqualified, the Speaker could not force them in the Janata fold and being less than one-third, they could not be considered to be a sepa group protected under the split provision. Another Janata Dal member, Máhtab Lal Singh was disqualified by the Speaker on ground of having abstained from voting and disobeying his party directions.

On 18 April, 1991, the Speaker ordered that 13 members (Krishna Prasad and others) of the BJP had at a particular point of time on 22 November, 1990 constituted a faction which had arisen as a result of the split in the original BJP and the Group consisted of not less than one-third of the total BJP membership which was 39, the group would therefore be deemed to be a new political party in terms of Pára 3 of the

\(^{431}\) A. Kumar, Azizulrahman, Maulana Abdul Jalal, Sheikh Saman Ali, Yusup Ali, Gopinath Das, Abdul Hussain Sarkar

\(^{432}\) On a petition filed by Shri Ali Akbar Miah on 20th May, 1996.

\(^{433}\) On a petition filed by Shri Ismaili Hussain.
Tenth Schedule even though the “indiscipline” of all of the 13 members except two was condoned by the BJP Legislature Party. The Speaker felt that the benefit of doubt was due to all the 13 members, as the Tenth Schedule and the rules framed thereunder were silent on the question of time and duration of split. The moment one-third of a party pronounced their claim to constitute a group representing a faction which had arisen as a result of the split in the original party, the split had to be recognised.

On 30 July, 1997, an application for disqualification was filed before the Speaker by Ganesh Prasad Yadav, leader of the Janata Dal Legislature Party against Raghavendra Pratap Singh, alleging that the member has acted against the party Whip by voting in favour of the confidence motion of Rabri Devi on 28 July, 1997. To this allegation Raghavendra Pratap Singh replied that no such Whip was issued nor was it intimated to him. He also challenged the maintainability of the application under the Tenth Schedule.

The Speaker Dev Narayan Yadav gave his decision on 14 September, 1998. Going through the proceedings of the case, he saw that the applicant Ganesh Prasad Yadav was not only unable to provide evidential proof regarding the issue of Whip, he could not prove that Raghavendra Pratap Singh voted against the Whip. The Speaker held that the application was not in accordance to the provisions of the Tenth Schedule to the Constitution, was not maintainable, as not being based on facts and as being against the provisions of Bihar Vidhan Sabha Members (Disqualification due to Defection) Rules, 1986.  

On 24 December, 1997, the Congress party split with party leaders Jagannath Mishra and Ram Lakhan Singh Yadav floating a new regional outfit, the Bihar Jana Congress. The launch was attended by 11 former MLAs, 2 former MPs and over 40 former district Congress presidents.

On 9 May, 1998, eight of the 29 JD MLAs broke away under the leadership of State party president Ramai Ram. He announced their decision to join RJD at a press conference in Patna. With the switch over by the JD MLAs, RJD’s strength increased to 141 in the Vidhan Sabha which had an effective strength of 318.

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434 Speaker held “In case of non-issue of whip voting at discretion does not invoke disqualification. Assumption of the office of minister is not a ground”.
On 24 November, 2000, a split occurred in 18 member Janata Dal (U) Party under the leadership of Ram Sevak Hazari along with five other members namely---Pashupati Kumar Paras, Virendra Kumar Singh, Ramanand Singh, Sushil Kumar Singh, Ramakishore Singh. They formed a separate group which was called Janashakti. An application was made to the Speaker for the recognition of the group. The Speaker by his order of 2 December, 2000, gave recognition to Janashakti.

On 29 July 2002 speaker allowed split in the Janta Dal because four out of 12 MLAs formed a new party by the name of Janta Dal (Jaiprakash)435.

On Nov. 1, 2002, speaker allowed merger of Bhujan Sanayparty with RJD in 2003 claim of merger by 27 out of 30 members of Samta party with Janta Dal allowed by speaker.

In 2004 speaker Legislative Assembly allowed merger of Janta Dal (Jaiprakash) and Samata Party with RJD.

On 26 June, 2004, the Chairman of the Bihar Legislative Council passed an order disqualifying Mahachandra Prasad Singh from the membership of the House under para 2 of the Tenth Schedule. The same day, the Speaker of the Bihar Legislative Assembly allowed a petition to disqualify Shivanandan Prasad Singh under para 2 of the Tenth Schedule.In 2005 speaker allowed merger of 2 MLAs group of Revolutionary Communist party with RJD.

(iv) Chhattisgarh

Pro term speaker of Chhatisgarh Legislative Assembly allowed claim in split in BSP on 23 November, 2003 as a new party BSP (C) as one out 3 members formed it.

On 20 December 2001, 12 out of 35 members, met the speaker and submitted a communication intimating that consequent upon a split in BJP, they had formed a new party by the name of Chhatisgarh Vikas party436.


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436 Later all 12 members met the speaker at around 7 A.M. and intimated that their party had merged with INC. Claim was allowed by Speaker on same day i.e. 20 Dec. 2001.
Delhi

On 8 August, 1995, two members of the Delhi Legislative Assembly, Ajay Maken and Haroon Yusuf who were elected on Congress (I) ticket were declared as ‘unattached’ by the Speaker following their expulsion from Congress (I) Legislature Party.\footnote{437 Supra Note 7, p. 24}

On 19 March, 1996 Ajay Maken was again recognised as a member of the Congress Legislature Party after he rejoined it. The Speaker held that there was nothing in the Anti-Defection law to bar an ‘unattached’ member from rejoining the party from which he had been expelled.\footnote{438 Ibid.}

On 30 March, 1996, Ramvir Singh Bidhuri, Parvez Hashnil and Matin Ahmed constituted a separate party by the name Janata Dal (Bidhuri) as a result of the split in the Janata Dal Legislative Party. The application for the recognition of the split was made to the Speaker on 2 April, 1996. The Speaker recognised the split with immediate effect on the ground that in the 4 member original political party, this group consists of not less than one-third members of such Legislature party.\footnote{439 Ibid.}

On 17 April, 1996, the Janata Dal (Bidhuri) group wrote to the Speaker, Delhi Vidhan Sabha that they had decided to merge the group with the Congress Party. The Speaker Charti Lal Goel vide his order dated 6 May, 1996, under the Tenth Schedule to the Constitution accepted the merger with immediate effect.\footnote{440 Ibid.}


Goa

In Goa, Speaker Barbosa was alleged to have engineered defections to himself become Chief Minister. Later, the Speaker who had disqualified some members was

\footnote{442 Ibid.}
himself shown the door and his successor requalified the disqualified members\textsuperscript{442}. On 13 December, 1990, the Speaker of the Goa Legislative Assembly, Surendra V. Sirsat, dismissed a petition against six members of the Congress Legislature Party. The six members being more than one-third of the Congress Party members, claimed that they had split from the Congress Legislature Party and formed a separate party, but they objected to the petition on grounds of non-maintainability, as requirements of Rules 6(6) and (7) under the Tenth Schedule had not been complied with—petition was not duly signed and verified and duly signed and verified documentary evidence had not been produced. Interestingly, the six members in question had left the Congress Party with the then Speaker, Dr. L.P. Barbosa, formed the new Goan People’s Party under his leadership on 24 March, 1990 and withdrawn support from the Congress Government of Chief Minister, P.S. Rane. The same day, i.e., on 13 December, 1990, Dr. K.G. Jalmi, a member of the Goa Legislative Assembly elected under Para 6(1) of the Tenth Schedule to consider a petition for disqualification of Speaker Dr. L.P. Barbosa decided that Dr. Barbosa had become subject to disqualification for having voluntarily given up the membership of his party (Congress) and having formed or joined under his own leadership a new Goan People’s Party\textsuperscript{443}. Dr. Jalmi held that the protection of exemption under Para 5 of the 10th Schedule was available to a Speaker only for purposes of being non-party or above parties while discharging the duties of a Presiding Officer. It could not be used to encourage the Speaker for becoming an active politician while remaining Speaker.

By another decision of the Speaker, two members of the Maharashtrawadi Gomantak Party (Chopdeker and Sanjay Bandeker) were disqualified by Speaker Sirsat on 13 December, 1990 for voluntarily giving up the MGP membership as evidenced by “their conduct, actions and speech”\textsuperscript{444}.

\textsuperscript{442} Churchil Alemajose, Somnath Zuwalkar, Luvis Alex Cardozo Mouvin Godinho, Baptist Gonsalves and Ms Farrel Freda.

\textsuperscript{443} Official Gazette Extra Ordinary, Government of GOA, Dated 14-12-1990. Petition was filed by Dr. Barbosa was rejected by High Court. An Appeal was filed and stay on impugned order was obtained from Supreme Court. Later Supreme Court vacated stay on 18 Dec. 1999.

\textsuperscript{444} Official Gazette Extraordinary, Govt. of India dated 13 dec. 1990. Respondents obtained stay from the High Court on operation of the order. Thereafter Shri Sirat was removed from the office of speaker. Respondent filled review petition before speaker, who set aside the speaker order. High Court allowed a petition and disqualified in the respondent.
On 6 February, 1991, Speaker Sirsat dismissed a petition against Dr. Barbosa and six others without going into the merits of the alleged defection on the ground that it did not comply with the requirements of Rule 6(6) inasmuch as the petition was not duly signed and verified.

On 7 February, 1991, Speaker Sirsat dismissed the petition seeking disqualification of an independent member, Dr. Carmo Rafael Pegado. The Speaker found no case made out to prove that Dr. Pegado had joined Congress (I). It was argued that Dr. Pegado had become a Minister in the Congress Government, voted with the Congress and by his conduct and association he was in the Congress and had also signed a statement to that effect. The Speaker, while criticising Dr. Pegado for the statement held that there was bar to an independent member being a Minister in a party government or in his supporting a party while remaining independent.

On 15 February, 1991, S. Ravi Naik was disqualified for having voluntarily given up the MGP membership after he failed to produce evidence of any split in the M.G. Party or of his and those with him constituting one-third of the membership of original M.G. Party.\footnote{Official Gazette Extraordinary, Govt. of Goa, dated 15 Dec. 1991.}

On 8 March, 1991, the Acting Speaker, Simon P. D’Souza held that a split had taken place in the MGP on 24 December, 1999. He, therefore, set aside and rescinded the order of 13 December, 1990 passed by his predecessor and declared that the two members of the MGP [Chopdeker and Sanjay Bandeker] who were part of the one-third group continued to be members of the Assembly without a break. The Acting Speaker also observed that his predecessor’s decision was taken in haste, time asked for leading evidence was not given and proper procedure not followed.

By another order passed the same day (8 March, 1991), the Acting Speaker rescinded the 15 February, 1991 order of his predecessor disqualifying S. Ravi Naik from membership and held that he continued to be a member from the date of his election without any break “consequent upon the split which occurred in the M.G. Party and consequent upon the formation of the faction in the Legislative Wing, as a result of the split in the M.G. Party in view of the fact that there was split in the M.G. Legislature Party comprising of more than 1/3rd members” including Naik.
On 21 June, 1991, the Acting Speaker again held that there was a split in the MGP on 24 December, 1990 where eight MLAs belonging to the MGP constituted themselves as a splinter group named MGP (Ravi Naik group). In the light of the split finding, the Acting Speaker dismissed four petitions seeking disqualification of four MGP members.

On 31 March, 1993, in Kashinath G. Jalmi v. Speaker, the Supreme Court ruled that chief Minister Ravi S. Naik and two of his cabinet colleagues Ratnakar M. chopdekar and Sarijay Bandekar stood disqualified under the anti-defection law by the orders of Speaker Surendra V. Sirsat on 15 February, 1991, that the revocation of the disqualification orders by Acting Speaker Simon Peter D’Souza on 7 and 8 March, 1991 was null and void because even the Speaker himself did not have the power to review his own disqualification order, and that an appeal against the Speaker’s decision could be filed in the High court.

Meanwhile, in view of the Supreme Court judgment, the Governor asked Chief Minister Naik not to take any major policy decision till he was cleared by the High Court. On 14 May, 1993, the Goa Bench of the Bombay High Court also upheld the disqualification of Naik and the other two Ministers. The court felt that the Chief Minister had failed to adduce evidence to prove a split in the MGP. Soon thereafter, the Governor was reported to have asked Naik to resign.

In an Assembly of 40, the Congress (I) had only 20 members including the Speaker. Following the court decision of 14 May, the Governor dismissed the two Ministers who stood disqualified from membership. Naik resigned on 17 May.

On 19 May, 1993 on an appeal by Naik and the two Ministers, the Supreme Court ordered a partial stay of the operation of the High Court judgment of 14 May. Naik could not remain Chief Minister or Minister but he could continue as a Member till the appeal was finally disposed of.

On 14 June, the Goa Bench of the Bombay High Court admitted a petition for the disqualification of four Congress ministers.

On 15 June, 1993, a citizen, Atmaram Parab filed a petition in the Bombay High Court, Goa Bench for the disqualification of six MLAs of the Goa People’s

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446 AIR 1993 SC 1873
Party. It was argued that a petition had been filed with the speaker in January, 1992 but even though 17 months had passed, no decision had been taken by the Speaker. All these six MLAs had defected from the Congress in March, 1990 with the then Speaker Dr. Barbosa to form the Goan People's Party. Five of these 6 MLAs were readmitted to the Congress in May 1993.

On 9 February, 1994 the three year long see-saw legal battle ended when the Supreme Court finally quashed the disqualification of Naik and upheld his continued membership of the Assembly with all bars to his becoming a Minister or Chief Minister removed\textsuperscript{447}.

On 1 April, 5 Ministers of Chief Minister Dr. Wilfred De Souza's Cabinet in Goa sent letters of resignation to the Congress President, Narasimha Rao. The next day, on 2 April, in a surprise development and in a bizarre exercise of powers by Governor Bhanu Prakash Singh, the De Souza Ministry was dismissed and Naik installed as Chief Minister. One of those who had resigned was named Deputy Chief Minister and the other four were also included in the Council of Ministers. The question of the unprecedented misuse of powers by the Governor was reportedly discussed between the President and the Prime Minister for an hour. In a day of fast moving developments, Governor Bhartu Pratap Singh was asked to resign. He submitted his letter of resignation on 3 April, 1994. The President accepted it. Kerala Governor, Rachaiah was sworn in to hold additional responsibilities for Goa until other arrangements were made.

Ravi Naik was persuaded to resign. He sent his resignation on 4 April, 1994. The Congress Legislature Party in Goa met to elect its new leader but decided to leave the decision to the Congress PresidentRao decided in favour of reinstating De Souza. The latter was sworn in on 8 April, 1994.

In the November 1994 State elections, the Congress lost its overall majority in Goa. On 16 December, Pratapsingh Rane of the Congress was appointed Chief Minister of the coalition government. The outgoing Chief Minister Wilfred D'Souza joined the new government. On January, 1995 following the alliance with the Maharashtrawadi Gomantak Party (MGP), the Congress attained absolute majority.

\textsuperscript{447}Ravi S Naik V. Union of India, AIR 1994 SC 1558
On 24 July, 1998, ten members of the Congress under the leadership of Dr. Wilfred A. D'Souza resolved to split from the original political party and form a separate group by the name Goa Rajiv Congress Party. The Speaker was informed on 27 July, 1998 at 12:30 p.m. and asked for the allotment of separate seats\textsuperscript{448}.

A disqualification petition was filed before the Speaker seeking ad-interim ex-parte relief by Pratap Singh Raoji Rane, the Chief Minister of Goa and also by Dr. Wilfred Menezes Mesquita, the Cabinet Minister against the ten members\textsuperscript{449} under the Tenth Schedule to the Constitution. They were disqualified with effect from 27 July, 1998 from the membership of Goa Legislative Assembly in terms of Article 191(2) of the Constitution\textsuperscript{450}.

The disqualified members filed Writ Petition No. 296/98 and 297/98 in the High Court of Bombay at Goa challenging the interim order passed by the Speaker on 28 July, 1998. The order was set aside by the Court on 3 August, 1998. In its judgment, the court held that the respondent no. 1 that is, the Speaker, had acted in great haste and the said order was against all canons and principles of natural justice\textsuperscript{451}.

The ten split members of the Assembly invoked writ jurisdiction under Article 226 of the Constitution on account of common judgment dated 14 August, 1998 passed by the Speaker in Disqualification Petition No. 1 / 1998 filed by Pratap Singh Raoji Rane and Disqualification Petition No. 2/1998 filed by Dr. Wilfred Menezes Mesquita. The point of contention was that the Speaker had fixed the order of Disqualification Petition No. 1/98 and 2/98 on 14 August, 1998 at 12.00 noon which was adjourned to 4.00 pm. It was alleged that the same was done with a view to entertain disqualification petition No. 3/98 filed by Domnic Fernandes, MLA. The Speaker did not give any copy of the order of Disqualification passed against the split members on 14 August, 1998 till 4 p.m. It was alleged that it had been intentionally delayed to prevent them from approaching the court for relief. The court gave the order that the Speaker acted in partisan manner violating natural justice. The

\textsuperscript{448} Supra Note 7, p. 27.
\textsuperscript{449} Wilfred A.D. Souza, Dayanand G. Narvekar, Subhash Ankush, Pandurang Bhatale, Pandu Vasu Naik, Chanderkant Chodkar, Carmo Pagndo, Jagdish Achrya, Deo Mandrakar, Smt. Fatima, D. Suza.
\textsuperscript{450} Official Gazette, Govt. of Goa, Dated 14 Aug. 1998.
\textsuperscript{451} Dr. Wilfred A.D. Souza and others V. Shri Tomazinho and Others. Http://www.judis.nic.in
impugned judgment and Order dated 14 August, 1998 passed by the Speaker allowing disqualification petitions No. 1/98 and 2/98 and disqualifying the petitioners w.e.f 27 July, 1998 from being members of the Legislative Assembly of Goa under Article 19 1(2) of the Constitution read with Tenth Schedule was quashed and set aside by the High Court by its judgment and Order of 7 September, 1998.

Earlier, by its orders on 18 August, 1998, the court had granted a stay with a view to ensure continuance of status quo until the final disposal of the petition.

In November 1999, Francisco Sardinha alongwith ten other MLAs broke away from the Congress and formed the Goa People’s Congress Party (GPCP). This led to the collapse of the Congress Government led by Luizinho Faleiro.

On 15 August, 2000, the Congress Legislature Party, by then the main opposition in the State split when five of its MLAs broke rank expressing resentment against the PCC leadership and extended support from outside to Francisco Sardinha led coalition government. The rebel group led by Sheikh Hasan, formed a separate group called Indian National Congress (Sheikh Hasan). The rebel MLAs included Prakash Velip, Philip Neri Rodrigues and Jose Philip Desouza452.

On 13 December, 2000, four MLAs broke away from the Goa People’s Congress Party (GPCP) to form a separate group headed by Somnath Zuwarkar. He along with Subhash Shirodkar, Victoria Fernandes and Francisco Silveira, all former ministers had split from the group and formed GPCP (Zuwarkar). The seven member GPCP was later reduced to three453.

On 5 April, 2001, Goa People’s Congress Party (GPCP), led by former Chief Minister Francisco Sardinha merged with the main opposition, the Congress Party in the State. On 27 August, 2001, Dayanand Narvekar, MLA and former Deputy Chief Minister was admitted into the Party in the presence of GPCP President Nirmala Sawant and the leader of the opposition Luizinho Faleiro, at a function held in the party office in Panaji. With this the strength of the Congress in the Goa Assembly had gone up to 14454.

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452 Supra Note 7, p. 28.  
453 Ibid  
454 http://www.wikipedia.org
(vii) Gujarat

First application under Tenth Schedule of Indian Constitution was filed in Gujarat Legislative Assembly against Sh. Jaspal Singh on ground of violation of which of Janta Dal Legislative party during the voting on a motion of confidence on 1 November 1990. Petition was allowed by Speaker and respondent declared disqualified accordingly\textsuperscript{455}.

On 25 June, 1991 the Speaker declared a Janata Dal Party member, Jaspal Singh disqualified for having disobeyed the Whip of his party and voted against a resolution moved by the Chief Minister. The contention of Jaspal Singh that his action had been condoned by Party President Bommai was not accepted, as the Whip was issued by the Whip of the Janata Dal Legislature Party who alone could condone its disregard.

On 1 August, 1991 on a petition by Jaspal Singh, the Supreme Court ordered that pending hearing and final disposal of the application, Jaspal Singh would be entitled to all the perks as a member of the House without the right to participate in its proceedings.

In view of the express provisions of paras 6 and 7 of the Tenth Schedule, the Speaker decided not to take any cognizance of the interim order of the Supreme Court.

On 13 December, 1991, after the Supreme Court vide its judgment of 12 November, 1991 had struck down Para 7 of the Tenth Schedule barring the jurisdiction of courts in cases of disqualification, the Speaker passed another order allowing Jaspal Singh to enjoy the perks excluding salary without the right to participate in the proceedings of the House.


Thereafter, by the Order of the Supreme Court dated 8 May, 1995, the petition for special leave to Appeal\textsuperscript{456} by Jaspal Singh was dismissed and consequently Supreme Court’s Order dated 1 August, 1991 and 12 November, 1992, were vacated.

In the 1995 general election to the State Assembly, the BJP had won 121 seats. Keshubhai S. Patel was elected leader of the BJP Legislature Party and was sworn in as the Chief Minister. On 18 August, 1996, a Bhartiya Janata Party member Sankarsingh Vaghela claimed that he along with 46 members of the Bharatiya Janata Legislature Party had formed a separate group known as Mahagujarat Janata Party (MJP), and requested the Speaker to recognise his group and make separate sitting claimed that the party had 46 member and as such they were more than 1/3rd for the statutory recognition of the split.

Simultaneously, several petitions were received by the Speaker, seeking disqualification of 28 members on the ground that some of the members shown in the list submitted by Vaghela had not consented to join him and they were still in BJP and as such the defecting group did not consist of the required numbers for claiming split.

In the meantime, the then Chief Minister presented to the Speaker 13 names of members who were on the list, but who continued to owe allegiance to the BJP and expressed their willingness to remain with BJP. Some amongst these 13 members submitted that their signatures were taken under duress. Some of them stated they have never appended their signatures to the said list and that their signatures on the list were forged or tempered.

Subsequently, on 3 September, 1996, the Assembly was summoned for taking a vote of confidence. Due to serious illness of the Speaker, the Deputy Speaker presided over the sitting of the House, and as soon as the House met, he announced his decision regarding the recognition of the MJP and adjourned the house sine-die. This decision of recognition was challenged and the Speaker reversed it.

With the passage of time the political conditions of the State changed and the leader of MJP was sworn in as Chief Minister with the support of the Congress. A new Speaker got elected who rescinded the earlier Speaker’s decision. However, the new Speaker did not take any decision about the so-called split and subsequent disqualification petition.

\textsuperscript{456} Civil Appeal No. 11742 of 1991\url{http://www.judis.nic.in}
In the meantime, the Assembly was dissolved and a new election to the Assembly was announced. Thus, the disqualification petitions and the question of recognizing the split under the Tenth Schedule were never taken up and both the issues became infructuous on the dissolution of the Assembly.

Two members of the Janata Dal informed the Speaker on 9 November, 1998 that they were joining the Congress Party. Another member of the Janata Dal resigned from the Dal. On 20 July, 1999 the All India Rashtriya Janata Party with all its members merged with the Indian National Congress. On 13 August, 1999 the Samajwadi Party which had only one member in the Assembly merged into the BJP.

(viii) Haryana

On 8 Feb. 1989 Ch. Dvi Lal claimed merger of his party i.e. Lok Dal, consisting 60 MLAs, with Janta Dal on 11 Feb. 1989 claim was allowed by speaker.

On 26 March, 1991, the Speaker of the Haryana Vidhan Sabha declared three members—Vasu Sharma, Rao Ram Narain and Azmat Khan—as having incurred disqualification under Para 2(1)(a) of the Tenth Schedule. Their claim of protection under the split clause was not accepted, as they had not joined the Janata Dal (5) on the date of the split, viz. 6 November, 1990, but did so subsequently. While this could be considered as a second split, the three did not constitute one-third of the members. They were, therefore, not entitled to protection.  

Earlier, on 6 November, the Speaker, when duly informed of the formation of a distinct group of Janata Dal (S) Party consisting of 41 members, had Defections in State Legislatures 31 recognised it under the Tenth Schedule and the Rules, as they were more than one-third of the then strength of the Janata Dal in the Vidhan Sabha.

In another case, on 10 April, 1992, the Speaker, Haryana Vidhan Sabha, dismissed the petition against a BJP member, K.L. Sharma on the ground of defection from BJP and joining the Congress. The facts were that Sharma had earlier broken away from BJP and formed a separate party BJP (K). His claim of a split in BJP was recognized by the Speaker. Subsequently, he made a claim for the merger of his

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BJP(K) in the Congress. Merger was accepted by the Congress and also recognised by the Speaker.\(^{458}\)

On 20 Dec. 1991, the conc member of the newly formed Janta Dal (H) Shri Hari Singh claimed to have merged with INC and merger was recognized by speaker on 27 December, 1991.

On December 1992 speaker declared that Dr. Omparkash Sharma as an unattached member who was expelled from Haryana Vikas Party on 22 November, 1992.

On 3 September, 1993 the 11 member Haryana Vikas Party under the leadership of Chowdhury Bansi Lal was split when four of its MLAs, Amar Singh Dhanak, Dharampal Singh, Peer Chand and Lahri Singh formed a new party HVP(A)—under the leadership of Amar Singh Dhanak. The group requested the Speaker for recognition as a legislature party and allotment of separate seats in the House. The request was acceded to.\(^{459}\)

On 25 February 1994 smt. Chandaravati, MLA Claimed of her lone member party i.e Janta Dal with INC which was allowed on 26 Feb. 1994.

On 14 January 1997 Sh. Virender Singh MLA along with 2 MLAs claimed of their party i.e. AIIC (T) consisting three MLAs with INC which was allowed by speaker on 6 Feb. 1997.

On 9 Dec. 1997 Sh. O.P. Chantala, MLA claimed merger of his party i.e. Samata party with Haryana Lok Dal (RLP) allowed by speaker on 19 January, 1998.

In July, 1999, the HVP suffered a split when 16 MLAs of the party broke ranks Ieana to the fall of Barisi Lal ministry. On 16 August, 1999, the newly formed Haryana Vikash Party (Democratic) HVP(D), decided to merge formally with the Indian Nalkmal Lok Dal (INLD) led by Om Prakash Chautala. Out of the seven party legislators of the HVP(D) fourteen had unanimously decided to merge into INLD. Chautala who was present on the occasion said that this should not be taken as change of party but was a case of a merger.

On 16 November, 1999, three MLAs namely Jagdish Yadav, Ram Sarup Rama and Subash Chaudhary quit the Haryana Vikas Party (HVP) led by former

\(^{458}\) R.B. Sharma V. Speaker Haryana Vidhan Sabha, CWP No. 6662 of 1992 www.judis.nic.in

\(^{459}\) The Tribune dated 4 September 1990, p. 1.
Chief Minister Bansi Lal, to join Indian National Lok Dal (INLD). The Speaker Ashok Kumar Arora, said that these MLAs had petitioned him expressing their desire to quit the party. The Speaker said he would personally talk to each of the HVP MLAs before taking a decision on their party affiliations.

On 10 January, 2000, five expelled leaders of the ruling INLD, including three dropped ministers of O.P. Chautala government, joined the Congress.

On 15 June, 2004, Nafe Singh filed four separate petitions against Rajinder Singh Bisla, Jai Prakash, Bhim Sen and Dev Raj Deewan under paras 2 and 6 of the Tenth Schedule of the Constitution read with rule 6 and rule 8(1)(b) of the Haryana Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986.

The main contention of the petitioner was that the respondents who were independently elected members of the Haryana Legislative Assembly had joined the Indian National Congress and had consequently attracted the disqualification under para 2(2) of the Tenth Schedule. Reliance was placed on various news reports. The Speaker vide four separate detailed orders dated 25 June, 2004 held that in the light of the evidence produced by the petitioner and the fact that the respondents were unable to present any cogent evidence to controvert the same, the respondents stood disqualified under para 2(2) of the Tenth Schedule from the membership of the Haryana Vidhan Sabha.\(^{460}\)

The same day, on a petition by Jasbir Mallour, the Speaker held Karan Singh Dalal, the sole constituent of the Legislature Party of the Republican Party of India, disqualified under paragraph 2(1)(a) of the Tenth Schedule as he had formed/joined the Haryana Republican Party.

In another decision of 25 June, 2004 the Speaker considered a petition filed by Jasbir Mallour against Jagjit Singh dated 31 December, 2003 under paras 2 and 6 of the Tenth Schedule of the Constitution read with rule 6 and rule 8(1)(b) of the Haryana Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986. The contention of the petitioner was that the respondent who was the sole constituent of the Legislature party of the NCP had incurred disqualification by joining/forming the Democratic Congress Party of Haryana. The Speaker upheld the

\(^{460}\) Haryana Govt. Gazette, Extraordinary, June 25, 2004, p. 1216. For details see Annexure H.
contention of the petitioner and held that the respondent stood disqualified from membership of the House\textsuperscript{461}.

Furthermore, on 15 June 2004, Nafe Singh had filed two separate petitions against Moola Ram and Daryab Singh under paras 2 and 6 of the Tenth Schedule of the Constitution read with rule 6 and rule 8(1)(b) of the Haryana Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986. The main contention of the petitioner was that the respondents who were independently elected members of the Haryana Legislative Assembly had joined the Indian National Congress and had consequently attracted the disqualification under para 2(2) of the Tenth Schedule. Reliance was placed on various news reports. The Speaker vide two separate and detailed orders dated 5 November, 2004 held that in light of the evidence produced by the petitioner and the fact that the respondents were unable to present any cogent evidence to controvert the same, the respondents stood disqualified under para 2(2) of the Tenth Schedule from the membership of the Haryana Vidhan Sabha\textsuperscript{462}.

On 2 Nov., 2004, Ch. Bansi Lal claimed merger of his party i.e. IIVP, consisting two MLAs, with INC, which was allowed by speaker on 16 Nov. 2004.

On 13 March, 2008 the Speaker vide two separate orders held that Dharam Pal Singh Malik and Rakesh Kamboj who were elected on the ticket of the Indian National Congress had incurred disqualification under the Tenth Schedule as they had voluntarily given up the membership of the Indian National Congress by publicly declaring their intention of severing themselves from the party and forming a new political party, issuing press releases to that effect\textsuperscript{463}.

On 25 March, 2008 the Speaker passed an order disqualifying Bhajan Lal from membership of the Haryana Vidhan Sabha on the ground of defection from the Indian National Congress as he had voluntarily given up the membership of the Party. The Speaker observed that the respondent had shown great disaffection to the Indian National Congress in political rallies, press conferences, posters and public meetings. The respondent thereafter formed a new political party and this act was widely

\textsuperscript{461} Ibid., p. 1231, Respondents challenged speaker order in Jagdish Singh v. State of Haryana, AIR, 2007 SC 590

\textsuperscript{462} Ibid., Petition Dismissed.

\textsuperscript{463} Haryana Govt. Gazette, Extraordinary dated March 13, 2008. For details see Annexure H.

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reported in the press. This amounted to defection under the Tenth Schedule and Bhajan Lal stood disqualified from the Haryana Vidhan Sabha\(^464\).

On 9 Nov. 2009 Four\(^465\) out of 6 MLAs of Haryana Janhit Congress (BL) claimed merger of their party with INC which was allowed by speaker on same day i.e. 9 Nov. 2009\(^466\).

Next Day i.e. 10 November 2009 one\(^467\) out of two MLA of HJC, Dharm Singh claimed merger with INC which was allowed by speaker on same day i.e. 10 November, 2009\(^468\).

On Nov. 9, 2009 a petition was filed by Sh. Kuldeep Bishnoi for disqualification of all 5 MLAs who had merged with INC by order of speaker dated 9 November 2009 and 10 November, 2009 which is under consideration till date i.e. 29 Feb. 2012\(^469\).

On 3 Feb. 2010 state president of INLD Ashok Arora field petition against all 5 MLAs of HJC (BC) who merged with INC by order of speaker dated 9 Nov. 2011 and 10 Nov. 2011\(^470\).

On 23 Feb. 2010 Sh. Ajay Chautla filed petition against Five MLAs who joined INC. The petition is under consideration till date\(^471\).

On 20 December 2011 Punjab and Haryana HJC gave direction to speaker, Haryana Vidhan Sabha to dispose all petitions before 30 April 2012 and declared all five MLAs unattached till disposal of petitions\(^472\). The order of High Stayed by Supreme court\(^473\).

(ix) **Himachal Pradesh**

On 2 February, 1991, the Speaker, Himachal Pradesh Vidhan Sabha, ordered under the Tenth Schedule and the Rules that since eight members of the Vidhan Sabha constituted a faction which had arisen as a result of the split in the original Janata Dal and consisted of not less than one-third of the members of the Dal, the faction would

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\(^464\) Haryana Govt. Gazette, Extraordinary, Part II dated 25 March, 2008. For details see Annexure H.

\(^465\) Satpal Sangwan, Vinod Bhayana, Narender Singh, Zile Ram Sharma

\(^466\) See Annexure H.

\(^467\) Dharm Singh

\(^468\) See Annexure

\(^469\) Vinod Bhayana, Narender Singh, Satpal Sangwan, Zile Ram Sharma, Dharm Singh

\(^470\) Ibid.

\(^471\) Ibid.

\(^472\) Kuldeep Bishnoi V. Speaker Haryaan Vidhan Sabha, The Tribuen dated 22 Dec. 2011

\(^473\) Speaker Haryana Vidhan Sabha v. Kuldeep Bishnoi The Tribune dated January 2012.
be deemed to be a new political party and the eight members would be treated as members of the Janata Dal (S) which would thereafter be their original political party.

Subsequently, on 25 July, 1991, the Speaker recognised another split, this time in the, Janata Dal (S) with three of its members—\textsuperscript{474}not being less than one-third of the party members—forming the Himachal Congress (Vikas Manch).

Again, on 1 July, 1992, Janata Dal (S) was further split with two of its members—not being less than one-third of the party members—\textsuperscript{475}being recognised by the Speaker as members of the Himachal Vikas Manch.

On 18 September, 1993, seven MLAs from Janata Dal, Samajwadi Janata Party and Himachal Congress joined Congress(I). The Congress strength which was 16 in a house of 60 rose to 23—\textsuperscript{476}.

On 10 March, 1998, Mansa Ram and Prakash Chaudhary, MLAs, along with others formed a new party in the name of Himachal Kranti Party by disassociating from the parent party (Himachal Vikas Party). On 11 March, 1998, this newly formed Himachal Kranti Party merged with the Bharatiya Janata Party. The Speaker recognised the split of the original political party, the formation of new Himachal Kranti Party and its subsequent merger with the Bharatiya Janata Party.

A petition was filed on 9 June, 1998, before Speaker Gulab Singh Thakur by Kashmir Singh a sitting member of Himachal Pradesh Legislative Assembly against Mansa Ram and Prakash Choudhury, seeking their disqualification under para 2 and 4 of the Tenth Schedule to the Constitution, read with rule 6 of the Members of Himachal Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986. It was alleged that (i) the newly formed political party was not a registered political party; (ii) it represented a de-facto merger of split-faction of Himachal Vikas Congress with the already existing registered Himachal Kranti Party and; (iii) the number of members of the merging party or such faction was less than the necessary minimum of three.

On 26 July, 1999, the Speaker dismissed the petition on the following grounds:

\textsuperscript{474} Sh. Ramial, Moti Ram, Lajja Ram
\textsuperscript{475} Sh. Jagat Singh Negi, Roop Singh
\textsuperscript{476} Supra Note 7, p. 32.
(i) The anti-defection provisions do not distinguish between the registered and unregistered political parties, nor does the law specify that after splitting or before merger the concerned faction or political party should get registered.

(ii) With lack of evidence to the contrary, the split faction intended to form a new political party, and after the split the new political party—Himachal Kranti Party—became their original political party which conforms to the purpose of Tenth Schedule to the Constitution.

(iii) The Himachal Kranti Party in toto merged with the Bharatiya Janata Party which is completely protected under the provisions of para 4 of the Tenth Schedule to the Constitution.

On 3 May, 2001, Himachal Vikas Congress of former Union Minister Sukh Ram, merged with the Congress in the State. HVP chief O.P. Rattan, a former MLA, said in Shimla, that all party leaders and workers, barring supporters of former Minister Mohinder Singh who had joined Lok Jana Shakti, had rejoined the Congress.\textsuperscript{477}

On 24 January, 2003, the Speaker passed an order dismissing a petition filed against Mohendar Singh by Sukhram on the ground that the former had defected from the Himachal Vikas Congress Party. The petition was dismissed on the ground that it did not comply with the requirements of rule 7 and rule 6 of the Members of H.P. Legislative Assembly (Disqualification on the Ground of Defection) Rules, 1986\textsuperscript{478}.

(x) \textit{Jammu and Kashmir}

On 7 August, 2008, Bilal Ahmad Khan Lodhi who was set up as a member from the Kashmir province by the People’s Democratic Party (PDP) was disqualified from the membership of the House by the leader of the Legislature Party of the Jammu and Kashmir People’s Democratic Party in exercise of the power conferred upon him under para 6 of the Seventh Schedule of the Constitution of Jammu and Kashmir.\textsuperscript{479}

On 22 January, 2009, Ashok Kumar Sharma who was set up as a member from the Jammu province by the Indian National Congress was disqualified from the

\textsuperscript{477} http://www.wikipedia, see also Supra Note 7, p. 34.
\textsuperscript{478} Ibid.
\textsuperscript{479} The Tribune, Chandigarh, 7 Aug. 2008
membership of the House by Guichain Singh Charak who was the leader of the Legislature Party of the Indian National Congress in Jaminu and Kashmir in exercise of the power conferred upon him under para 6 of the Seventh Schedule of the Constitution of Jammu and Kashmir\textsuperscript{480}.

On 10 February, 2009, Bashir Ahrned Naaz, an elected member from Jammu province set up by the Jammu and Kashmir National Conference was disqualified from membership of the House by M.Y. Taing, the Leader of the Legislature Party of Jammu and Kashmir National Conference in exercise of the power conferred upon him by para 6 of the Seventh Schedule of the Constitution of Jammu and Kashmir\textsuperscript{481}.

(xi) Karnataka

On 20 March, 1989 the Speaker of the Karnataka Legislative Assembly decided to accord recognition to the Janata Dal Legislature Party consisting of 111 out of 138 members of the Janata Party. The decision came on a petition filed on 16 February, by the Leader of the Opposition, Smt. K.S. Nagarathanamma. Other points on which the Speaker pronounced his decision were as follows:

1. No proceedings under the Tenth Schedule of the Constitution can be a matter of discussion in the House.

2. Proceedings on a petition for disqualification on grounds of defection are not in fact proceedings of the House. That is why by a legal fiction introduced in Para 6(2) of the Tenth Schedule, the benefit of Article 212 of the Constitution is extended to the proceedings on such a petition.

3. Only the matters on which the House can take a decision can be raised and discussed in the House. While on a question of privilege the House has the final say, in case of disqualification under the Tenth Schedule, the House cannot have any say and the Speaker has been made the sole and final authority.

4. All the proceedings on a petition for disqualification are to be held outside the House. They may be held in the Chamber of the Speaker.

\textsuperscript{480} The North Line 23 Jan 2009. 
\textsuperscript{481} Ibid dated 11 Feb. 2009 See also Supra Note P. 34.
(5) It is the duty of the Presiding Officers to give recognition to parties in the House. The recognition of parties by the Election Commission is for purposes of allocation of election symbols only.

(6) The Constitution of India does not recognise any political parties for formation of Government. Articles 163 and 164 lay down that the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed on the advice of the Chief Minister.

On 20 May, 1995, the Karnataka Congress Party (KCP) floated by former State Chief Minister S. Bangarappa had a vertical split when 5 of its 10 MLAs joined the ruling Janata Dal. The Janata Dal Legislature Party secretary V. Samanna announced the entry of 5 KCP MLAs—Mallikayya Guttedar, Basavaiah, Subash Guttedar, Raja Venkatappa Naik, and Vishwanath Asontikar.  

26 August, 1996, N. Thippaima, Dr. M.P. Nargowda, K.S. Sachidananda, Dr. Mahadev Banakar, Dr. Siddalingiah, Smt, Saritha Kusumakar Desai and on 27 August, 1996, B.S. Horatti, members of Karnataka Legislative Council requested the Hon’ble Chairman, Karnataka Legislative Council, to recognise them as Members of separate group in the Legislative Council in terms of para 3 of the Tenth Schedule to the Constitution and according to Karnataka Legislative Council (Disqualification of Members on Ground of Defection) Rules, 1986, as they had come out from Janata Dal Legislature Party. The Hon’ble Chairman, Karnataka Legislative Council, after careful examination of the request, recognised the group of seven members of Legislative Council as a separate group and allotted them separate seats in the Legislative Council with effect from 28 August, 1996.

On 12 February, 1998, disqualification petition was ified before the Hon’ble pI Speaker of the Karnataka Legislative Assembly by the Leader of the Karnataka Janata Dal Legislature Party, J.H. Patel against R.V. Deshpande, member of Kamataka Legislative Assembly according to rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on Ground of Defection) Rules, 1986 a read with the

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482 The Hindu, 29 May, 1995, p.1
483 Supra Note 13, p. 712
484 Ibid P. 713

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Tenth Schedule to the Constitution. It was charged that the member had violated the party Whip and had joined the Rashtriya Nay Nirmana Vedike.\textsuperscript{485}

The Speaker, Ramesh Kumar gave his decision on 7 May, 1999, wherein he did not find R.V. Deshpande guilty of violating the party Whip nor for any act which was prohibited under para 3 of the Tenth Schedule to the Constitution. On the question of R.V. Deshpande joining Rashtriya Nay Nirmana Vedike, the Speaker held that this did not fall within the preview of the Speaker for initiating any action, as the said action had occurred outside outside the House.

On 11 Oct. 2010 Karantaka speaker Sh. K.G. Bopaih disqualified 11 BJP dissident MLAs\textsuperscript{486} and five independent MLAs\textsuperscript{487} hours before the B.S. Yedduruppa government faces floor test in the house.\textsuperscript{488}

On 13 May 2011 Supreme Court in Balchandra L. Vs. B.S. Yeddyurappa and others set aside the disqualification of all 16 MLSs including 5 independents.\textsuperscript{489}

**Kerala**

On 15 January, 1990 the Speaker decided that a member of the Kerala relations will Congress R. Balakrishna had incurred disqualification for having voluntarily a split in given up his party membership. Since there were five members in the party and Again he alone had given up his membership, it could not be considered a split under Privileges para 3 of the Tenth Schedule. joined it.\textsuperscript{490}

On 5 April, 1991, the Kerala State Assembly was dissolved for the forthcoming State and national elections. The Congress led United Democratic Front (UDF) ousted the CPI(M) led Left Democratic Front in the State Assembly elections held in June 1991 and K. Karunakaran replaced E.K. Nayanar as Chief Minister.

On 9 December, 1993, T.M. Jacob, member, Kerala Congress(M) Legislature Party, in a letter addressed to the Speaker informed him of the formation of a separate block in the Kerala Legislative Assembly comprising along with him Johny Nelloor, P.M. Mathew and Mathew Stephen. On 11 December, 1993, Jacob stated that he was

\textsuperscript{485}S.C. Kashyap, Anti Defection Law and Parliamentary Privileges, 2011, p. 35.

\textsuperscript{486}Balchandra Jarkiholi, Belur Gopala, Anand Ashotikar, Dr. Sarvabowna, V. Nagaraju, Raje Kage, Y. Samangi, Nanjundaswag, S.K. Bellubbi, H.S. Shankaru, and Shivanganda

\textsuperscript{487}Venkatramamma, Shivraj Tangadagi, Godinath Sekhar M.P. Narendra Swami.

\textsuperscript{488}The Hindu 12 Oct. 2010.

\textsuperscript{489}Civil Appeal No. 4444-4476 of 2011, See also The Hindu Dated 14 May 2011.

\textsuperscript{490}Kerala Gazette, Extra Ordinary, dt 15 January, 1990.
elected as the leader of his faction. Tenth K.M. Mani, leader of the Kerala Congress(M) Legislative Party denied any split and alleged that he had expelled T.M. Jacob, P.M. Mathew, Mathew Stephen and Johny Nelloor from the party.

On 20 January, 1994, the Speaker by his decision upheld the split in the Kerala Congress (M) Legislature Party and recognised the group led by T.M. Jacob and permitted them to act as a separate block inside the house as Kerala Congress (Jacob).

On 3 February, 1995, a no-confidence motion was admitted in the State Assembly against the K. Karunakaran-led UDF government. The government was saved by 87 to 50 votes. But on 16 March, 1995, Karunakaran had to resign owing to the pressure by the Congress dissidents and major ruling front partner's demand, seeking his replacement. A Congress-led UDF coalition government headed by A.K. Antony assumed office on 22 March, 1995, replacing the Karunakaran government491.

As reported on 9 May, 1996, the CPI-M-led Left Democratic Front (LDF) recaptured power in Kerala defeating the Congress-led UDF headed by A.K. Antony in the Assembly elections. On 17 May E.K. Nayanar was chosen to head the LDF ministry in the State. -

A new political party, Revolutionary Socialist Party (Baby John) was formed on 11 November, 1999, with Baby John as the Parliamentary Party leader, Prof. was A.V. Thamarakshan as the Deputy leader and Babu Divakaran as the Secretary and the Whip. On 7 December, 1999, the Speaker was requested to allot a separate block to the new political party.

The Speaker recognised the split in the 5 member R.S.P. and formation of the Parliamentary Party of the R.S.P. (Baby John) as a separate block and permitted its functioning in the legislature492.

(xii) Madhya Pradesh

On 1 May, 1991, the Speaker decided that six members493 (Mangal Parag and others) of the Janata Dal had become disqualified for having voluntarily severed

491 The Hindu, 23 March, 1995
492 Supra Note 13, p. 715.
relations with the Janata Dal and having failed to prove that this arose out of a split in the party.\textsuperscript{494}

Again on 10 August, 1991, the Speaker agreed with the findings of the Privileges Comm-i-ttee and disqualified a member (Dileep Bhatore) for having joined the BJP after getting elected to the Assembly as an independent. Bhathore was inducted in the BJP Government as a Parliamentary Secretary\textsuperscript{495}.

On 26 February, 1997, the Speaker granted recognition to the merger of the Krantikari Samajwadi Party with the Samata Party. Following the merger, Kanker Munjare, the lone Krantikari Samajwadi Party member in the House, was recognised as a member of the Samata Party\textsuperscript{496}.

On 20 January, 1998, a petition was filed by Rajkumar Patel, a member of Congress Legislature Party against another member named Akhand on the ground that he had defected from the Congress Party and had joined Bahujan Samaj Party and that he was liable for disqualification under para 2(1)(a) of the Tenth Schedule of the Constitution. The Congress Legislature Party leader by his letter dated 10 February, 1998 affirmed that Akhand had joined BSP although he was a member of the Congress and was thus liable to disqualification.

On 14 May, 1998, the Speaker by his order held that Akhand stood disqualified from the membership of the House\textsuperscript{497}. A stay order was procured by Akhand from the High Court, Madhya Pradesh dated 25 May, 1998, by which Akhand was allowed to participate in the working of the House, but not allowed to vote till further order. The House was made aware of the orders on 28 July, 1998 in the July/September session.

The Bahujan Samaj Party in the Madhya Pradesh Assembly had a strength of 11 Members. On 25 October, 1999, four B.S.P. members resigned from the Party and formed a new party called Progressive Bahujan Samaj Party. On 27 October, 1999 they intimated the Speaker of the split and the formation of a new party. The Speaker on 1 November, 1999 recognised the split and allotted them separate seats in the House.

\textsuperscript{494} Madhya Pradesh Gazettee, Extra Ordinary, dt. 1 May 1991.
\textsuperscript{495} Ibid dt. 10 Aug. 1991
\textsuperscript{496} Supra Note 7 p. 37.
\textsuperscript{497} Madhya Pradesh Gazettee, Extraordinary, dt. 14 May, 1998.
On 27 November, 1999, under the leadership of Balvir Singh Kushwah, the Progressive Bahujan Samaj Party, which was subsequently joined by more members such as Adal Singh Kausana, Bundilal Rawat and Lakhan Singh Yadav, decided to merge with the Congress.

On 28 March, 2000, the Speaker under para 3(b) and Para 4 of the Tenth Schedule to the Constitution recognised the merger. The decision was announced in the Assembly on 30 March, 2000.

(xiii) Maharashtra

Legislative Assembly: On 15 March, 1989, 21 members of the Janata Party in members Vidhan Sabha claimed a split and formation of a new Janata Dal.

On 12 June, 1991, Suresh Jam of the Socialist (Sharad Sirtha) Party claimed On 8 merger with Congress (I) TJ padhyaj.\(^{498}\)

On 26 July, 1991, nine members belonging to the Janata Dal Legislature Party, claimed that there was a split in the party and that they had formed allied new party—Maharashtra Congress Dal. They requested the Speaker to make cairnqseparate seating arrangements for them in the House. On the same day, the newly formed Maharashtra Congress Dal merged formed ai with the Congress with

On 4 December, 1991, eighteen MLAs\(^{499}\) belonging to the Shiv Sena Legislature Oii Party claimed a split in the party. A request was made to the Speaker to Mahas recognise the newly formed party—Shiv Sena(B). On 18 December, 1991, 17 members of the 18 member Shiv I Sena (B) claimed merger with Congress (I)

On 30 December, 1993, five members\(^{500}\) of the Janata Dal Legislature Party formed a separate group in the House. They claimed a split in the Janata Dal- and requested the Speaker to recognise the newly formed group called Independent Group and to make separate seating arrangements for them in the House.


\(^{500}\) Moreshwar Tempurade, Yamanarao Chatap, Vasant Bonde, Shivraj Tond Chir Kar, Saroj Kashikar.
On 6 August, 1994, Bhimrao Ramji Keram, Republican Party of India MLA-announced the merger of his party with Congress (I).

On 23 October, 1999, Bashir Mossa Patel claimed a split in the original Socialist Party and the formation of the new Socialist Party (B). He requested the Speaker to make separate arrangements for seating in the House. On 26 January, 2001, the Socialist Party (B) headed by Bashir Moosa Patel merged with the Nationalist Congress Party.

On 8 October, 2001, Navab Malik belonging to the Socialist Party claimed a split in the party and the formation a new group. Later on the same day he announced the merger of his Socialist Party with the Nationalist Congress Party.

Legislative Council:

In the Legislative Coun on 23 March, 1987, seven members (Chedilal Budanlal Gupta and others) of the Indian Congress (Socialist) merged with Congress (I).


On 29 July, 1993, Vijay Krishnaji Sawant of Peasants and Workers Party claimed split in the party and formed a new party—Bharatiya Peasants Party (V). The next day he merged the new party with Congress (I).

On 3 June, 1999, 14 members [Chandrakant Bhujbal and others] claimed to have formed a new party—Congress (R). The same day Hussain Dalwai of Samajwadi Party claimed a split in the Party and formed a new Party—Samajwadi Party (D). Soon after, he merged the new party with the Nationalist Congress Party (NCP).

On 26 July, 1999, Vinayak Tukaram Mete of Akhil Bharatiya Maratha Mahasangh claimed a split in the party and formed a new party—Nay Maharashtra Vikas Party. The same day, the new party was merged with Nationalist Congress Party (NCP).


\textsuperscript{501} Hasmukh Vasantrai Upadh

(xiv) Manipur

On 26 July, 1990, the Speaker of the Manipur Vidhan Sabha Borababu Singh decided that seven of the Congress (I) members had incurred disqualification as from 24 July, 1990 under the Tenth Schedule for having voluntarily given up the membership of the party. The claim of protection under the split clause could not be recognised as the number was less than one-third of the Congress (I) membership. Earlier, of the 26 Congress (I) members in the House, 14 had written to the Speaker claiming a split. However, seven of them subsequently retraced their steps and said that they continued to be with Congress (I).\(^{502}\)

The disqualified members moved the Supreme Court challenging the validity of the Anti-Defection Law. The Court quashed the disqualification of members in November 1991, but by then, 7 more had been disqualified. Speaker Borababu refused to be bound by the Supreme Court decision. After a protracted battle Borababu sought to defuse the developing ugly situation by agreeing to abide by the Supreme Court decision and to rescind the disqualification. This did not, however, prevent him from disqualifying another batch of 13 MLAs on 24 April, 1992 after President’s rule was lifted on 9 April, 1992 and a Congress-led coalition government was installed in office under dubious circumstances. It was reported that in a 60 member House, as many as 21 MLAs stood disqualified, reducing the effective strength to 39 only. It was under these circumstances that the Dorendra Singh Ministry won the vote of confidence on 28 April, 1992.\(^{503}\)

On 4 January, 1994, Seven MLAs belonging to Manipur Congress merged with the Congress (I). Radhabind Koijam, President of the Manipur Pradesh Congress (I) Committee, admitted the MLAs to the party.

On 22 December, 1994, the Speaker disqualified 23 MLAs in the Assembly under the Anti-Defection law and debarred them from entering the House. On 23 December, 1994, a No-Confidence motion against the Rishang Keishing-led Congress Ministry was passed by the opposition. The Chief Minister and the 22 disqualified

\(^{503}\) Supra Note, 7, p. 38.
MLAs decided to move the court against the Speaker’s decision. The Guwahati High Court on the same day granted stay on the Speaker’s order and allowed the disqualified members to vote in the House. On 28 December, 1994 the Chief Minister said that the disqualification was totally illegal and that the action of the Speaker H. Borobabu Singh would be ci both in the Supreme Court and the Guwahati High Court. On 9 January, 1995, the Rishang Keishing Ministry won the vote of confidence. The Supreme Court also turned down the plea of the Speaker against the High Court’s stay on the expulsion of the 23 MLAs504.

On 20 February, 1996, four different legislative parties with their respective lone MLAs merged with the ruling Congress in the State increasing their strength to 30 in the 60 member State Legislative Assembly. The parties that merged were: The Manipur BJP (1 MLA), Manipur CPI (1 MLA), Manipur JD (1 MLA) and JD-Mangibabu (1 MLA). The party president of Congress P.V. Narsimha Rao approved their merger in Congress.

On 20 May, 1996, Phungzathang Tonsing, State Congress(I) Committee President, in a press release declared the approval of the merger of the Samata Party Unit with its lone sitting member in the State Assembly—Samuel—with the Congress. With the joining of Samuel, the strength of the Congress in the 60 member Assembly went to 41.

On 5 July, 1996, four expelled Congress MLAs of the State Assembly namely—former Deputy Chief Minister Radhabinod Kojam, former Higher Education Minister Nimaichand Luwang, former Labour Minister N. Biren and S. Rajen Singh, were declared unattached by the Speaker W. Nipamacha Singh.

On 2 December, 1999, the Manipur unit of Rajiv Gandhi Congress (RGC) merged with the Congress. Yumkham Erabot was elected President of the State Unit.

On 4 January, 2000, the Speaker disclosed that disqualification proceedings had been initiated against 3 State MLAs namely M. Horam, Hilaludin Khan and Hangkhanpat who had quit the Congress and joined the ruling Manipur State Congress Party (MSCP). Disqualification proceedings against the three MLAs followed applications from three Congress legislators—A.S. Arthur, Mairangthem Okendro and T. Menisababu, who held that the three members who left the party did

not form one third of Congress strength of 14 MLAs in the House to make a split. Show cause notices were sent to them as to why they should not be disqualified as per provisions of the Tenth Schedule of the Constitution.


On 8 May, 2001, the Mariipur State Congress Party split and 18 rebel MLAs announced they will help install a BJP-led government in the State. 18 of the 31 member MSCP broke away and formed a new outfit called Progressive Manipur State Congress Party (PMSCP). The Speaker by his order on 9 May, 2001, recognised the breakaway group of MSCP. On 28 December, 2001, the Congress Legislature Party had a split with ten of its eleven MLAs forming a new outfit, Manipur Regional Congress Party (MRCP), headed by Radhabinod Kojam. The Speaker on 29 December, 2001 recognised the new party with 10 legislators under the leadership of Radhabinod Kojam with effect from 28 December, 2001.

(xv) Meghalaya

On 5 August, 1991 a complaint was filed by H.S. Shylla MLA, requesting disqualification under the Tenth Schedule to the Constitution, against five independent candidates namely, Dr. Donkupar Roy, Mrs. Miriam D. Shira and Simon Siangshai who joined HSPDP(DL), and Monindra Agitok and Chamberlin Marak who joined HPU (BC).

The Speaker, P.K. Kyndiah by an interim order on 7 August, 1991 suspended the voting rights of the members within the assembly from 7 August, 1991 till final disposal of the case. When the Speaker’s powers to pass interim orders were questioned, he held that the authority vested in him regarding disqualification matters under the Tenth Schedule included powers to issue interim orders. On 17 August, 1991, the Speaker passed the final order. He applied a test for disqualification on two counts, first, whether an independent member has made himself amenable to any Whip of a political party or a forum of political parties. Secondly, whether such independent member was sharing an office along with any political party or a forum of political parties. He found that all the five independent members attracted
disqualification on both counts, as four of them namely, Dr. Donkupar Roy, Mrs. Miriam D. Shira, Monindra Agitok and Simon Siangshai were still in the Council of Ministers sharing office with the forum of original political parties and one other member, Chamberlin Marak was occupying the office of Government Deputy Chief Whip equivalent to the office of Minister of State. The Speaker declared all the five members disqualified505.

On 2 May, 1995, a letter from Dr. Henry Lamin MLA was received by the Speaker, wherein he informed the Speaker that split had occurred in the APHLC (A) legislature party—a constituent of the ruling Congress led by Salseng C. Marak and of his forming a new one-member party under the nomenclature APHLC (L). He requested for a separate seating arrangement in the house for the new party. On 24 May, 1995, the Speaker, J.D. Rymbai recognised the split, since the APHLC (A) was represented by three members. Dr. Henry Lamin’s claim for split satisfied the conditions of the Tenth Schedule to the Constitution.

On 25 June, 1998, a petition was filed by H.S. Lyngdoh MLA, against Smt. Maysalin War a, sitting member of the legislative assembly alleging that she had contested and won the election as a candidate of Hill State People’s Democratic Party (HSPDP) but had joined the TJMPF led by D.D. Lapang. He disclaimed the claim of M. War that the HSPDP legislature party in the House had split and a new legislature party i.e., HSPDP (M) had been formed. The Speaker, E.K. Mawlong on the same day, that is, 25 June, 1998, issued an interim order placing Maysalin War under suspension and taking away her voting rights till the final order506.

On 14 July, 1999, L.A. Sangma leader of the Nationalist Congress Legislature Party along with eight other MLAs requested the Speaker to allow the Meghalaya Congress Legislature Party along with the elected members and the Political Party to merge with the Nationalist Congress Party. It was further requested that after merger, the legislature party be recognised in the name and style of Nationalist Congress Legislature Party. NCP leader, P.A. Sangma said on 14 July, 1999 that the offer of the Meghalaya Congress Legislature Party led by Lotsing A. Sangma to merge with NCP was accepted.

On 3 August, 1999, the Speaker, E.K. Mawlong recognised the merger of the Congress Legislature Party and the new political party (the Nationalist Congress Party). The Party was to function under the name of the Nationalist Congress Party.

On 21 October, 1999, Smt. Maysalin War, MLA, submitted an application before the Speaker claiming a split in the three member Hill State People Democratic Party (HSPDP) both at the original party level and in the legislature party. On 1 November, 1999, the Speaker, E.K. Mawlong recognised the split in the original political party as well as the legislature party as it conformed to the provisions of the Tenth Schedule to the Constitution. He recognised the newly formed political party as HSPDP (M) and allotted separate seats in the house to its members.

On 7 February, 2000, the Speaker received an application dated 25 January, 2000, from Smt. Maysalin War informing him of the merger of the HSPDP (M) with the NCP. A letter was received on 6 March, 2000 from Lotsing A. Sangma leader of NCLP accepting the merger in the Nationalist Congress Party. On 7 March, 2000, the Speaker accepted the merger and allotted seats in the House accordingly.

On 27 July, 2001, the Speaker received an application dated 12 July, 2001 from L.A. Sangma leader NCLP requesting for acceptance of the merger of the People’s Democratic Movement (CM) into Nationalist Congress Party (NCP) under para 4 of the Tenth Schedule to the Constitution. Earlier Cyprian R. Sangma and Martin M. Danggo both MLAs had already split from the original People’s Democratic Movement and formed a new political party called PDM (CM). On 27 September, 2001, the Speaker recognised the merger⁵⁰⁷.

In an order dated 8 April, 2009, the Speaker of the Meghalaya Legislative Assembly held that Paul Lyngdoh had incurred disqualification under para 2(2) of the Tenth Schedule⁵⁰⁸.

In another order on the same day, the Speaker held that Sanbor Shullai had incurred disqualification under para 2(1)(a) of the Tenth Schedule. Furthermore by two separate orders on the same day, Ismail R. Marak and Limison D. Sangma were

⁵⁰⁷ Supra Note 13, p. 724.
⁵⁰⁸ The Gazette of Meghalaya, Extraordinary, 8 April, 2009
also held to have incurred disqualification for being members of the Meghalaya Legislative Assembly under para 2(2) of the Tenth Schedule\textsuperscript{509}.

(xvi) Mizoram

In Mizoram Legislative Assembly, the Mizo National Front Government which consisted of 25 legislators was reduced to minority following the withdrawal of support by a group of legislators belonging to MNF who claimed to have a strength of nine members, i.e., more than one-third of the total membership of the Legislature Party required for a valid split under the Tenth Schedule to the Constitution. The Speaker issued show cause notices to the said nine members and suspended them from membership of the House. The validity of the order of the Speaker was questioned by the Governor who asked the Speaker to clarify the “constitutional points behind his action”\textsuperscript{510}.

(xvii) Nagaland

On 1 August, 1987 the Speaker of Nagaland Legislative Assembly disqualified Dr. Setu Liegise, a member of the Naga National Democratic Party (NNDP) for having voluntarily given up his membership of the party by resigning from the party on 14 July, 1987\textsuperscript{511}.

Deciding the case of 13 members\textsuperscript{512} of the NFCC(I) who had signed a letter conveying their resignation from the NPCC(I) and the Congress(I) Legislature Party, the Speaker held on 30 July, 1988 that he had every reason to believe that there had been a split in the NPCC(I) political party followed by the formation of a new party, Congress(R) and therefore he decided to “recognise this split in the original NPCC(I) Party as well as in the legislature party in the House”. The Governor, however, did not accept the decision of the Speaker holding that there was no split envisaged in Para 3 of the Tenth Schedule.

On 15 May, 1990, the Speaker (T.N. Naguffie) decided that two members of the Congress (I) Legislature Party (T.A. Nagullie) and Chubatemjen were duly expelled from the Party. He, therefore, declared them unattached and refused to treat

\textsuperscript{509} Ibid.
\textsuperscript{510} Supra Note 13, p. 725.
\textsuperscript{511} The Nagaland Gazette, Extraordinary, dt 1 Aug. 1987.
them as part of a group of 12 members breaking away from the party. The remaining ten members did not constitute one-third of the party membership. The Speaker did not recognise the group of ten as a faction arising as a result of split in the Party and held that the ten members stood disqualified. This resulted in the fall of the S.C. Jamir Ministry which had come to power after the elections in January, 1990. The next Government formed by the ULF leader Chishi also fell in less than a month after 17 of the 24 NPC members in a House of 50 withdrew their support to the Chief Minister. Vamuzo, who led the toppling of the Chishi Ministry, became the Chief Minister in June 1990 with Congress (I) support. Later, following withdrawal of support by 12 members, the ruling party was reduced to a minority. But, the Chief Minister expelled from his party two of the 12 members leaving 10 who did not constitute 1/3rd of the membership. The two were declared unattached and the ten were disqualified. Vamuzo won the vote of confidence in the Assembly even though it was boycotted by the entire opposition.

On 9 August, 1990, the succeeding Speaker, Thenucho revoked the decision a petition of the earlier Speaker and held the orders declaring the two members Kbahtr unattached and disqualifying ten members were invalid ab initio as parts communication regarding the split preceded the letters of expulsion and the from mandatory procedure for disqualifying members was not followed. The Speaker order recognised the split in Congress (I) and the formation of Congress (Regional) seats C under Para 3 of the Tenth Schedule.

On 27 November, 1990, on receipt of information from leaders of NPC 9 Legislature Party and Congress (R) Legislature Party that the latter has merged AsseeT thly b with the former, Speaker decided to treat the twelve members of Congress (R) Bhajimana Legislature Party as members of the NPC Legislature Party. Consequent to his expulsion from Nagaland People's Council Party (NPC), Assembly the Speaker decided to treat K.L. Chishi as an unattached member in the House the member with effect from 26 November, 1990. Two more members expelled from NPC, Dr.H.V. Sakhri and S. Sedem were declared by the Speaker as unattached with effect from 13 December, 1990. However, by order of 30 January, 1991, the Speaker cos revoked his order regarding S. Sedem after the revocation of his expulsion by NPC.

513 Tu Nagaland Gazette, Extraordinary dt. 15 May 1990.
514 The Morung Express, 16 May, 1990. See also Nagaland post 16 May, 1990
On 15 December, 1990 the Speaker decided that members of Congress (I) had become subject to disqualification for having voluntarily given up the questk membership of their party. The next day, viz, on 16 December, 1990 the Speaker to the decided to disqualify ten more members by refusing to recognise a split in the NPC Party. He found that two of the 12 members who claimed a split had been expelled by the NPC Legislature Party earlier and the remaining ten did not under constitute one-third of the Party members. Bhaja Thus, under the Speaker’s orders of 15 and 16 December, 1990 as many as of 15 of the 60 members of the Assembly stood disqualified and when the Chief Minister’s Party was likely to be struck down by the Court, Governor Thomas on the advice of Chief Minister Vamuzo, dissolved the Assembly. This was by the followed by the President taking over the administration of the State under article 356.

On 25 October, 1993, Y. Sulanthung MLA, the sole member of the Democratic Labour Party (DLP) wrote to the Speaker about a split in the DLP he requested recognition for his party called Democratic Labour Party (S). On 26 October, 1993, S.C. Jamir, Chief Minister and leader of the Congress Legislative Party informed the Speaker that Y. Sulanthung had been admitted in the Congress Legislature Party. The Speaker, Nieba Nadang by his order dated 11 January, 1994, recognised the split and Sulanthung’s subsequent membership of the Congress. On 11 March, 1994, six members belonging to the Nagaland People’s imige Council by a petition to the Speaker informed him about the split in the NPC party and requested the recognition of the newly formed faction called Nagaland 23 People’s Council Democratic Party (NPCDP) consisting of P. Emyei (the leader of NPCDP), W. Eyong, T.P. Kanlam and K. Imlong. On 16 March, 1994, the Speaker Nieba Ndang by his order recognised the split and the newly formed party as their original party, with effect from 11 March, 1994. On 22 June, 1994, a petition was submitted by P. Emyei, leader of NPCDP and W. Eyong, Sedem Khaning, Chenlom and K. Imlong informing the Speaker of the merger of their as party with the Congress. This was corroborated by a letter dated 17 June, 1994 from S.C. Jamir, Chief Minister and leader of the

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515 The Nagaland Gazetteet, Extraordinary, dt, 16 December, 1990.
517 Supra Note 7, p. 44.
518 Ibid, p. 44
Congress. The Speaker by his order dated 8 July, 1994, recognised the merger and allotted to the members seats with the Congress\textsuperscript{519}.

(xviii) Orissa

On 29 March, 1989, a petition addressed to the Secretary Orissa Legislative Assembly was filed by Satya Bhushan Sahu, Congress Chief Whip against Bhajaman Behera, MLA belonging to Congress under para 6 of the Tenth Schedule to the Constitution and rule 6 of the Members of Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987, alleging that the member had voted contrary to the party Whip and had joined Janata Dal. The matter was sent to the Committee of Privileges, which after the investigation of the facts of the case, examination of the issues involved and taking into consideration the law of the land, observed that Behera had incurred disqualification under para 2(1)(a) and (b) of the Tenth Schedule to the Constitution and submitted its report to the Speaker on 22 August, 1989.

On 7 September, 1989, during his personal hearing Behera raised the question of maintainability of the petition on the ground that it was addressed to the Secretary. The Speaker dismissed the objection on the basis that it had no merit.

The Speaker vide notification dated 15 September, 1989, gave his order under powers conferred him under para 6 of the Tenth Schedule. He held that Bhajaman Behera had incurred disqualification in terms of para 2(1)(a) and (b) of the said Schedule for being a member of the Orissa Legislative Assembly with immediate effect\textsuperscript{520}.

On 15 February, 1992, a petition addressed to the Speaker was submitted by Jangyeswar Baboo, member of the Orissa Legislative Assembly against Rabindra Kumar Malik, independent MLA, under para 6 of the Tenth Schedule to the Constitution read with rule 6 of the Members of Orissa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987, alleging that he had joined the Congress by filing nomination papers for membership of Pradesh Congress Committee. The petition was supported by a copy of nomination paper and the membership of Niali Congress Block Committee.

\textsuperscript{519} Ibid, p. 45.
\textsuperscript{520} The Orissa Gazette, Extra Ordinary, dt. 15 Sept. 1989.
Ravindra Kumar Mallick in his reply stated that he had neither filed any axier nomination for the post of the P.C.C. member nor signed any document forent membership of the Block Congress Committee alleging that his signatures had been forged and fabricated by some miscreants with the intention to tarnish his image in the eyes of the public. The Speaker gave an opportunity to the petitioner to appear before him, whereby the petitioner presented a letter dated 23 March, 1992, of one Umakanta Nanda, a candidate for election to the post of P.C.C. member addressed to their District Returning Officer, as another documentary evidence in support of his petition.

The Speaker referred the matter to the Committee of Privileges for member investigation and report, which submitted its report before the Speaker on 20 December, 1994.

The Speaker vide his order dated 20 December, 1994, decided after considering the facts and circumstances of the case and report of the committee of Privileges submitted before him that the petition of Baboo filed against Maffick was not in order under para 2(2) of the Tenth Schedule to the Constitution. He accordingly dismissed the petition.

On 19 November, 1994, a petition was submitted to the Speaker by Ashok Das, MLA and the President of the Janata Dal, Orissa against Kumar Behera, MLA, another member of the Janata Dal under para 6 of the Tenth Schedule to the Constitution, requesting disqualification from the Orissa Legislative Assembly, alleging that he had voluntarily given up his membership of the Janata Dal. The leader of the Janata Dal Legislature Party confirmed the allegation.

On 1 December, 1994, Behera appeared before the Speaker personally and - confirmed his resignation from the primary membership of Janata Dal. The Speaker vide his order notified on 1 December, 1994 decided that Behera had incurred disqualification in terms of para 2(1)(a) of the said schedule for being a member of Orissa Legislative Assembly with immediate effect521.

On 15 December, 1997, Janata Dal suffered a vertical split in the State both in the organisational and legislative wings, with the rebels floating a new party “Biju Janata Dal” (BJD). The 43 member JD legislature party split with 29 of them forming the new party to be headed by late Biju Patnaik’s son Naveen Patnaik. The split came

in the wake of high command’s denial to permit the rebels to align with BJP in the coming election to defeat the Congress.

On 16 November, 1998, the nascent Biju Janata Dal legislature party under the leadership of Naveen Patnaik split with 15 of the 27 party legislators revolting against the party. On 2 December, 1998 the Biju Janata Dal legislature party split was formalized with the Assembly Speaker Chintamani Dyansamantara recognizing two separate groups BJD (A) and BJD (B) BJD . (A) consisting of the dissidents’ 13 member group of MLAs headed by Prafulla Samal and BJD (B) consisting of 14 MLAs loyal to Naveeri Patnaik led by Ram Chandra Sethi.\(^{522}\)

Trilochan Behera, MLA, informed the Speaker that the State unit of his original All India Trinamool Congress Party had merged with Biju Janata Dal Party from 24 April, 2001, hence he be accepted as the member of the Biju Janata Dal Legislature Party. The merger was confirmed by the President of Biju Janata Dal.\(^{523}\)

The Speaker by his order, dated 25 April, 2001, considering the fact that - Trilochan Behera was the lone member of the All India Trinamool Congress Party in the Orissa Legislative Assembly, and that he constituted the entire legislature party and fulfilled the provisions of sub para 2 of para 4 of the Tenth Schedule to the Constitution, recognised the merger and Trilochan Behera as the member of the Biju Janata Dal Legislature Party as his original party.\(^{524}\)

(xix) Pondicherry

The Speaker of the Pondicherry Legislative Assembly decided on 18 December, 1986 that two members of AIADMK Party - K. Anbalagan and Dr. M.A.S. Subramanian had incurred disqualification for having given up the membership of their original political party. The Speaker did not accept the claim of a split in the party as he said that in order to constitute a split, the political party must be split vertically. From top to bottom, a closely knit faction must arise and it should result in a group in the Legislature Party whose strength was not less than one-third of the

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\(^{522}\) Indian Express, 17 Nov. 1998.
\(^{523}\) Supra Note 7, p. 45.
\(^{524}\) Ibid.
Party members. There was no evidence to show that this had happened in the case of AIADMK\textsuperscript{525}.

On 20 December, 1990 the Speaker decided that two members—P Rajavelu and K. Deivanayagam—of the Janata Dal who joined Janata Dal (S) one a half months after the Party split could not claim the protection of the split clause and must be regarded as having voluntarily given up the membership of their original party and therefore incurred disqualification. However, on 26 December, 1990, on a joint petition by the two members, the Speaker reviewed and rescinded his order, upheld the claim of split and declared that the two continued to be members of the Assembly without any interruption\textsuperscript{526}.

On 20 December, 1999, R. Viswanathan, by his letter to the Speaker V.M.C. Sivakumar alleged that M. Manjini, another member of the Pondicherry CPI Legislature Party had joined Pattali Makhal Katchi (PMK). In reply, M. Manjini sent a letter to the then Speaker on 15 March, 2000, denying his giving up of CPI membership. The Speaker VMC Sivakumar on 16 March, 2000, ruled that the member continued to be a CPI member in the Legislative Assembly. The matter was sought to be reported by R. Viswanathan on 4 July, 2000. In his reply dated 9 August, 2000 M. Manjini clarified his position saying that the former Speaker had already taken a decision in this case and there was no provision in the rules to reconsider the case\textsuperscript{527}.

On 8 September, 2000, the Speaker A.V. Subramanian held M. Manjini disqualified under the Tenth Schedule from being a member of Pondicherry Legislative Assembly with immediate effect as there was enough evidence to support that M. Manjiri had voluntarily defected from CPI and joined PMK. The Speaker noted that M. Manjini had not come forward to deny subjectively the allegations levelled against him. Secondly, the recording of the then Speaker could not be construed as his ruling or decision under the Anti-Defection rules because it did not comply with the requirement of natural justice. The decision should contain the case of the petitioner, the issues relating to the case, appreciation of the facts and evidence.

\textsuperscript{525} The U.T. of Pondicherry Gazette, 18 Dec. 1986.
\textsuperscript{526} Subhash C. Kashyap, Anti Defection law and Parliamentary Privilege, 3rd Ed. 2011.
\textsuperscript{527} Ibid.
placed before the Presiding Officer and the findings on the issues with the reasons therefor.\textsuperscript{528}

On 20 September, 2000, S. Rathinam, Manohar, K. Rajasekaran and A. Ehumalai elected members of Pondicherry Legislative Assembly intimated the Speaker that they had formed a separate group called Tamil Manila Congress (S. Rathinam and Manohar). They were previously the members of Tamil Manila Congress (Moopanar). Speaker A. V. Subramanian on the petition by Jayakumar and M. Kandaswamy disqualified Rathinam, Manohar, K. Rajasekaran, and A. Ehumalai on 25 December, 2000 in terms of para 2(1)(a) of the Schedule. The Speaker dismissed the grounds on which the respondents since were contesting that the TMC (M) of Union Territory of Pondicherry was independent from that of TMC (M) Tamil Nadu and hence the split in the disqualified.

\textbf{(xx) Punjab}

On 16 February, 1987 the Speaker, Punjab Vidhan Sabha decided that a Shiromani Akali Dal member, S. Harbhajan Singh Sandhu had become subject to disqualification on the ground of giving up the membership of his original political party voluntarily.\textsuperscript{529}

On 1 and 4 May, 1987, by passing identical orders separately in cases and covering 23 members of the Shiromani Akali Dal, the Speaker declared all of them disqualified from the membership of the House on the ground of defection for having defied the party direction to vote for the candidates put up by the party for the offices of Speaker and Deputy Speaker.

The earlier Speaker had allowed the request of 27 Shiromani Akali Dal members to function as a separate group. The members insisted that the earlier general Speaker’s orders of 8 May, 1986 amounted to recognition of a split. A petition was filed before the Punjab and Haryana High Court challenging the proceedings under the Tenth Schedule and the vires of the Schedule itself. The Court upheld the validity of the Tenth Schedule except Para 7 which sought to exclude the the jurisdiction of the Courts in respect to matters relating to disqualification.\textsuperscript{530}

\textsuperscript{528} The UT of Pondicherry Gazette, dt. 8 September 2000.
\textsuperscript{530} Prakash Singh Badal and others Vs. Union of India and Others, AIR 1987 Punjab and Haryana 263.
Court held that the Speaker’s orders 8 May, 1986 were only for purposes of allotment of separate seats in the House and could not be treated as an order for purposes of Paragraph 6 of the 10th Schedule\(^{531}\). The question of split had to be decided by the Speaker after hearing the affected parties\(^{532}\).

The Speaker held that true test for determining a split is to see whether the original political party as contradistinguished from the legislature party had been split. Also, split must be ‘vertical’. The Speaker’s order said that the members in the following must happen before a member can save himself from the effects of Paragraph 2

(a) that the split should take place in the original political party;

(b) that a faction must arise as a result of the split in the original political party;

(c) that there should be a group which must represent that faction which arises as a result of the split in the original political party; and

(d) that the respondent must be a member of that group.

Since the Speaker refused to recognise the split, the question of members not being less than one-third was not considered relevant and all the 23 stood disqualified.

On 7 July, 1993, two members\(^{533}\) of the BJP broke away from the party, claimed a split and formed a new party called BJP (Punjab). The Deputy Speaker allotted them separate seats in the House.

On 13 April, 1993, Baldev Singh Ballamgarh, the only M.L.A. of the United Communist Party of India, announced the decision of merger with Congress (I) Party at a conference which was presided over by Sardar Beant Singh, Chief Minister and leader of the Congress Legislature Party in the Punjab Legislative Assembly. Earlier the State Unit of the United Communist Party of India in its meeting held on 10 April, 1993, at Muktsar had passed this resolution. An application seeking recognition of the merger was presented to the Speaker on 15 July, 1993. On 16 July, 1993 by his order the deputy Speaker Romesh Chandra Dogra performing the duties of office of Speaker allowed the merger and allotted to Ballamgarh a seat alongwith Congress(I)
in the Vidhan Sabha under Sub-para (2) of para 4 of the Tenth Schedule to the Constitution.

On 20 September, 1993, Dr. Ramesh Datt Sharma, M.L.A. (Anandpur Sahib) and Dr. Harbans La! M.L.A. (Sirhind) belonging to Bhartiya Janata Party (Punjab) submitted an application to the Speaker for merger with the Congress (I) Party. Earlier the Bhartiya Janata Party (Punjab) on 19 September, 1993, held a general house meeting and passed a resolution of merger with Congress (I). They further stated that they were the only two members of BJP (Punjab) Legislature Party and by themselves constituted the entire legislature party of BJP (Punjab), Punjab Vidhan Sabha. The Speaker Hamam Das Johar, by his order dated 15 December, 1993, under para 4 of the Tenth Schedule of the Constitution, allowed the merger and allotted to the two members seats alongwith with the members of Congress(T) with immediate effect.

(xxii) Rajasthan

The Speaker of the Rajasthan Vidhan Sabha rejected petitions seeking disqualification of 21 members of the Janata Dal for allegedly defying the Whip of their party in the voting on a motion of confidence in the Council of Ministers on 8 November, 1990. In view of the fact of a split in the Janata Dal at the national level in October-November 1990, the Speaker accepted the claim of the members in the matter of split.

On 22 January, 1994, it was notified to the Speaker that three elected members of Janata Dal—Brunjraj Singh, Narru Khan and Punjalal—had left Janata Dal and formed a new party called Bharatiya Janata Dal and elected Brunjraj Singh its leader. They claimed that the party had been formed on 1st December, 1993. The split was recognised by Speaker Harishankar Bhabda and the members were allotted separate seats. A petition for disqualification of these members was ified on 17 March, 1994, by Fateh Singh of Janata Dal. Another petition for disqualification was filed by Shantikumar Dhariwal on 25 March, 1994 of Congress on the ground of defection and violating the party Whip. The final decision on this matter was given by Speaker Samartha Lal Bhandari Meena on 24 October, 1998. The Speaker dismissed the petition on the ground that the alleged split by the three JI members and the formation of the BID, recognised by the then Speaker, allotting separate seats to them.

534 Supra Note 7 p. 49.
fell within the ambit of para 3 of the Tenth Schedule to the Constitution. Hence the members could not be disqualified according to para 2(1)(a)(b) of the Tenth Schedule. On the question of violating Whip, the Speaker held that the petitioner could not produce proper evidence so as to establish their claim that the alleged members violated the Whip or had voluntarily left the membership of their party according to para 2(1)(b) of the Tenth Schedule to the Constitution.

On 4 April, 1994, a petition was ified before Speaker Harishankar Bhabda by an elected Congress member Jagdeep Dhankhad against eight elected independent members Gangaram Chowdhuri (Badmer), Sajan Singh Yadav (Bahrad), Rohitashav (Bansur), Narendra Kanwar (Sawaimadhopur), Gyan Singh (Bhadra), Shashi Datta (TB), Gurjant Singh (Sangaria) and Mangal I (Kathumar), demanding disqualification from the membership of the House on the allegation of defection to the BJP vide paragraph 2(1)(a) of the Tenth Schedule to the Constitution. The petitioner pleaded that these members had been in association with the BJP after getting elected as independent candidates and had attended various functions of BJP. Also on 11 December, 1993, the Governor, had given them the oath along with the BJP candidates and the Chief Minister had allotted.

The defendants on 7 June, 1994 took an objection to the petition on the ground that the petition was not ified separately for each candidate. The objection was rejected by Speaker Harishankar Bhabda by his order dated 8 September, 1994. The final order was passed by Speaker Samartha Lal Meena only on 24 October, 1998. He dismissed the petition on the ground that only being an invitee to or being allotted portfolios by the party or the Chief Minister does not make any one liable for disqualification unless and until the candidate is participating in the day-to-day working of the party or is furthering the cause of the party. The petitioner also could not prove by evidence that the said members had actually joined the BJP.

By decision on 21 June, 1994 and 13 July, 1994, the Speaker disposed of several preliminary, procedural and other objections in connection with the proceedings on petitions under the Tenth Schedule of the Constitution.

On 4 April, 1996, Dali Chand, member of Rajasthan Vidhan Sabha who was elected on the Janata Dal seat relinquished his membership from JD and joined the

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Bharatiya Janata Party. A petition was filed by Fatch Singh, member of Janata Dal, against Dali Chand on the charges of defection. The Speaker Samartha Lal Meena gave his decision on 17 October, 1998. He dismissed the petition on the ground that Janata Dal had only 3 members and even if one member moved out he constituted one-third of the total and amounted to a split under para 3(a) of the Tenth Schedule.\footnote{Ibid dt. 17 October 1998.}

\textbf{(xxii) Sikkim}

Eighteen of the 31 ruling Sikkim Sangram Parishad (SSP) members in a House of 32 revolted against their leader and Chief Minister, Nar Bahadur Bhandari. They elected Sanchaman Limboo, former Health Minister as their leader. The lone opposition (Sikkim Democratic Front) member also pledged his support to Limboo. The rebels included 7 members of the Bhandari Cabinet and the Speaker himself. On 7 May, 1994 the rebels, all stationed in New Delhi, expelled Bhandari from SSP while the Chief Minister in Gangtok sacked the 18 party rebels. The split was complete. On 15 May, 1994, Sanchaman Limboo along with 15 other members informed the Speaker that a split had taken place in the Sikkim Sangram Parishad Party, and that they had formed a new party called Sikkim Sangram Parishad (5) Party. The split was formally recognised by the Speaker on 21 May, 1994.

The Governor asked Bhandari to prove his strength on the floor of the House by 17 May. Bhandari lost with the rebel SSP (S) led by Limboo getting 16 votes and Bhandari 14. The next day, on 18 May Limboo was sworn in as the new Chief Minister along with eight other Ministers. The Governor asked him to prove his majority on the floor of the House which he did on 6 June. The Ministry was later expanded to 15.\footnote{Sikkam Express 18 May, 1994, 19 May, 1994.}

On 30 May, 1994, Padam Bahadur Gurung, MLA and Nar Bahadur Bhandari, MLA filed a disqualification petition under the Tenth Schedule to the Constitution against Dilliram Basnet, MLA and Birbal Subba, MLA. Dilliram Basnet later resigned as the member of the Assembly. The case against him was declared infructuous. Speaker Dorjee Tshering Bhutia dismissed the petition on the ground that since the group represented the faction which arose as a result of split in the party and since the
group consisted of sixteen persons that was not less than one third of the members of the Legislative Party, this case fell under para 3(a) of the Tenth Schedule.

Again On 3 June, 1994, Nar Bahadur Bhandari, MLA filed a petition of disqualification against Sanchaman Limboo and 15 others under para 2(1)(a) of the Tenth Schedule to the Constitution. The Speaker, Dorjee Tshering Bhutia dismissed the petition on the ground that the splitting group consisted of not less than one third of the members of their Legislature Party.

In swift moving developments, on 17 June, the one-month-old Limboo Ministry was faced with a serious crisis when 12 of the 32 legislators under Bhandari’s leadership resigned from their membership of the Assembly. Two Ministers and another MLA also resigned. The lone Sikkim Democratic Front member, Pawan Kumar Chamling and his close associate another MLA, T.M. Rai submitted their resignation taking the tally of resignations to 17538.

On 27 June, Chief Minister Limboo formally announced the merger of his SSP(S) with Congress (I). He named his 12 member Council of Ministers as the Congress iGovernment. With the resignation of 17 members, the effective strength of the 32 member House was reduced to 15 only and with four ministers also having resigned, the strength of the 13 member Council of Ministers had come down to 9 only. Chief Minister had the support of 14 members. The former Chief Minister Bhandari and the SDF member Chamling were doing their best to build pressure for the imposition of President’s Rule. While all this was happening, petitions seeking disqualification of some defecting members including Ministers were pending — with the Speaker. Also, a petition was filed in the Sikkim High Court against the Speaker having taken too long to deliver his decision.

On 22 July, 1994, the Speaker announced his decisions on the petitions pending before him. He upheld the split in the party and therefore found that the members petitioned against could not be disqualified. The Speaker accepted the contention of two members that they were forcibly detained at the residence of the then Chief Minister and could not therefore join the Limboo group earlier.

On 3 June, 1994, K.N. Upreti filed a disqualification petition against Taraman Rai under the Tenth Schedule to the Constitution. Taraman Rai resigned from the

538 Sikkam Express 18 June 1994
membership of the House on 17 June, 1994. The resignation was accepted on 18 June, 1994.

On 8 July, 1994, the Speaker disposed of the petition filed by K.N. Upreti sp1 as infructuous\(^ {539}\).

On 25 February, 1995, six members of the Sikkim Sangram Parishad Party resigned and formed a separate group called SSP(R). On 26 February, 1995, the dc group gave a written intimation to the Speaker stating that they constituted i more than one-third of the original party. They requested recognition to the group and separate seats in the House. The Speaker by his order dated 21 March, 1995 recognised the split and the formation of the new group and allotted them separate seats in the House\(^ {540}\).

On 21 March, 1995, K.N. Upreti filed a disqualification petition against the six members namely Sarvashri Ram Lepcha, Menlom Lepcha, Testen Bhutia, R. Ongmu, Dollee Tshering Lepcha and Thutop Bhutia, on the grounds of defection from the SSP Party. But in the meantime on 13 September, 1996, K.N. Upreti informed the Speaker about his disinterest in pursuing the case as he had been expelled from the party\(^ {541}\).

On 26 September, 1996, the Speaker dismissed the petition as not pressed. On the matter of split, the Speaker held that of the original 10 members of the party, six had formed a new group which was more than one-third of the original party and hence not liable for disqualification. Moreover separate seats had already been allotted to them on 21 March, 1995, recognizing the split\(^ {542}\).

**(xxiii) Tamil Nadu**

On 28 January, 1988, the Speaker by separate orders disqualified 6 members (Nedunchezhiyan and others) of the AJADMK Legislature Party on the ground that they had constituted themselves into a separate group under Jayalalitha and Nedunchezhiyan and that it amounted to their voluntarily giving up the membership of the AIADMK\(^ {543}\).

\(^ {539}\) Supra Note 7 p. 52.  
\(^ {540}\) ibid.  
\(^ {541}\) ibid.  
\(^ {542}\) ibid.  
On 8 January, 1994, two AIADMK legislators were expelled from the party. The Speaker disqualified them when he was informed that they had joined another party. The High Court dismissed a petition against the disqualification. The Supreme Court held that even if a member is expelled from the party, he does not cease to be a member of the party that had set him up as a candidate for election. But if he voluntarily joins another party, he subjects himself to disqualification\(^{544}\).

On 26 March, 1996, S Thirumavakarasu, General Secretary of MGR-Anna DMK, merged his party with the ruling AIADMK in the presence of Chief Minister Jayalalitha. Other colleagues included former state ministers YSM Yusuf, S Raghavanandan and C R Edmund\(^{545}\).

On 5 April, 1996, the AIADMI< General Secretary, Jayalalitha expelled 3 MLAs namely V Periyasamy, S Rajamannar, and V Gopalakrishnan. These legislators had filed nominations against the official party candidates for State Assembly elections.

On 22 December, 1997, the Congress State unit split with senior leaders and former TNCC president Vazhapadi K Ramamurthy quitting the party and floating a new outfit called Tamil Nadu People’s Congress. This was the second split in the State Congress within 2 years. Earlier Moopanar had quit to form TMC.

On 10 March, 2001, J. M. Rasheed Haroon resigned from TMC to protest its decision to align with AIADMK for the coming election in Tamil Nadu. He joined the DMK led NDA in the State after floating a new outfit called Tamil Nadu Muslim Aikiya Jamaat.

(xiv) Uttar Pradesh

On 26 November, 1990, the Speaker of the Vidhan Sabha acting under the Tenth Schedule to the Constitution and the Rules made thereunder, accorded recognition to the fact that a split had taken place in the UP Jariata Dal Legislature Party and as a result two factions had arisen: one under the leadership of Mulayam Singh Yadav with 120 members and the other under the leadership of Revati Raman Singh with 86 members. Five members whose names appeared in both the lists were called by the Speaker to appear in person.

\(^{544}\) G. Vishwanathan Vs. Hon’ble Speaker, Tamil Nadu, 1996 2, SCC 353.
The two who expressed faith in the leadership of Mulayam Singh were accepted as members of that faction. For the other three, the Speaker said, a decision would be taken after talking to them. Simultaneously, the Speaker decided to rescind his earlier decision of 12 November, 1990 declaring 21 members as unattached since he noted that a split in the party had taken place before 12 November, 1990. Also, the complaints about disobedience of the Whip by members, petitions for disqualifying members, intimations regarding expulsions of members from the party etc. were all dismissed in the light of the decision in the matter of the split.\footnote{546 Supra Note 13 p. 740.}

Again another split in the Janata Dal Legislature Party was recognised by the Speaker when on 25 June, 1991 Kailash Nath Singh Yadav was elected leader of the legislature party. On 25 November, 1991 he was reported to have been removed from the leadership at a party meeting held under the Presidency of Revati Raman Singh. On 26 November, 1991, Kailash Nath Singh, still claimed to be leader of the Party. The Speaker, however, recognised the split—JD (A) with 35 members headed by Kailash Nath Singh and JD (B) with 56 members headed by Revati Raman Singh. The latter was recognised as leader of the Opposition.

On 4 March, 1994, Mitrasen Yadav, Member Vidhan Sabha and leader of the three-member Indian Communist Party, informed the Speaker in person and the merger application that there was a split in the Indian Communist Party and he had formed a separate group under his leadership. The Speaker recognised the separate group and Mitrasen Yadav as its leader. The same day (4 March, 1994) the Janata Dal also had two splits claimed in quick succession. In the Vidhan Parishad, of the 13 Janata Dal members, seven informed the Chairman of their constituting themselves into a separate party to be called ‘Pragatisheel Janata Dal’. The Chairman accepted the split in the Janata Dal and recognised the new party. Some three hours later, remaining six members of the party, another two parted company and formed a third group called the ‘Krantikari Janata Dal’. This was also recognised by the Chairman as a separate party. Again, the same day, the one-member Janata Dal (Samajwadi) announced its merger with BJP.\footnote{547 Supra Note 7 p. 54.}

On 24 March, 1994, the 27 member Janata Dal in the U.P. Vidhan Sabha also split formally with 10 of its members forming the Samata Group. The Speaker
recognised the new group and also fixed a time-limit by which any other Janata Dal members wishing to join the Samata Group could inform the Speaker.

On 30 March, the Samata Group with all of its 10 legislators merged in the ruling Samajwadi Party. The Speaker recognised the merger. What remained of the Janata Dal with its 17 members in the Vidhan Sabha faced another split when on 23-24 June, 7 of them formed a Samata Group and then merged it with the S.P. Both, the split and the merger were promptly recognised by the Speaker. Again, on 29 June, in the same fashion 4 of the 10 remaining Janata Dal members claimed a split and left the party but this time, they joined the Congress raising its membership from 28 to 32. The four were Ajit Singh supporters. Again, both the split and the merger were recognised by the Speaker, Dhani Ram Verma\(^548\).

On 22 July, 1994, 2 members of the 6 member Janata Dal legislature party under the leadership of Vishambhar Singh, along with Tejpal Singh, informed the Speaker in writing and in person that they had separated from Janata Dal and had formed a new group called Samata group. The Speaker recognised the group and allotted them separate seats in the house. Subsequently on the same day, both the members of the Samata Group in writing requested the Speaker to recognise their merger with the Samajwadi Party. By his order of 25 July, 1994, the Speaker allowed and recognised the merger under para 4 of the Tenth Schedule to the Constitution\(^549\).

On 7 September, 1994, Afzal Ansari of the 2 member Bhartiya Communist Party told the Speaker in writing and in person that he had formed a separate group called Samata group. He requested the Speaker for recognition. The Speaker on the same day, under para 3 of the Tenth Schedule gave the recognition. Afzal Ansari wrote to the Speaker to recognise his merger with Samajwadi Party. The Speaker under para 4 of the Tenth Schedule recognised the merger.

On 3 June, 1995, 25 Bahujan Samaj Party members led by Raj Bahadur formally broke away from the BSP. A new legislative party was formed by the name Bahujan Samaj Party (Raj Bahadur) with Raj Bahadur as its leader. The Speaker was informed about the split. Another letter to the Speaker was given regarding the extension of time to 15 days for those members who wanted to join the split group but

\(^{548}\) Ibid.
\(^{549}\) Ibid.
were held up by the BSP leaders. The Speaker Dhaniram Verma recognised the split and also allotted them separate seats. The time period was also extended till 18 June, 1995 to join the split group. On 3 June, 1995 itself a member of BSP Shriram Yadav wrote to the Speaker regarding his intention to join the BSP (Raj Bahadur). As already the time had been granted till 18 June, the Speaker allowed the member to join BSP(R) on the same day and allotted him a seat with BSP(R).

On 23 June, 1995, sixteen members of the Bahujan Samaj Party (Raj Bahadur) under the leadership of Rajendra Kumar gave an application to the Speaker stating that twelve of them had been included in the new party forcibly and/or fraudulently and from the other four no consent was taken nor were they presented before the Speaker. The applicants pleaded that as they had been recognised as the members of the BSP(R), and as there was a split in the said party under the leadership of Rajendra Kumar, they be recognised as a separate group under para 3 of the Tenth Schedule. The Speaker on 24 June, 1995 taking into consideration the provisions of the Constitution recognised the split and the new group called Bahujan Samaj Party (Rajendra) with Rajendra Kumar as its leader. They were also allotted separate seats in the House. On the same day, all the sixteen members presented before the Speaker their willingness to merge with the BSP. The Speaker on the very day allowed the merger and allotted to them seats with the BSP550.

By his order of 29 June the Speaker recognised four members—Narendra Singh, Charan Singh, Jagvir Singh and Prem Singh—until further orders, as members of the Pragatisheel Janata Dal with Narendra Siiigh as the leader of the Group. Separate seats in the House were allotted to them. By another order the same day, the Speaker recognised the merger of the Pragatisheel Janata Dal in Congress(I) Legislature Party.

On 21 April, 1997, four members of the Congress (Tiwari), Han Shankar Tiwari, Jagdambika Pal, Shyam Sundar Sharma and K.C. Singh wrote to the Speaker about their merger in the Congress and requested that they be recognised as the members of Congress. The Speaker on 23 April, 1997, allowed the merger under para 4 of the Tenth Schedule and allotted to them seats with the Congress.

550 Supra Note 13 P. 740.
On 20 October, 1997, three members of the Janata Dal—Rajaram Pandeya, Ramasarey Paswan and Rampal Rajwai the leadership of Shri Rajaram Pandeya told the Speaker in person and in writing that they had split from JT) and had formed a separate group named Janata Dal (Rajaram Pandeya) The Speaker recognised the split and the new group and allotted to them separate seats in the house the very day.

The same day (20 October, 1997), under the leadership of Naresh Agrawal, 19 members of the 37 members Congress Party informed the Speaker of the split in the party and the formation of the new faction named Uttar Pradesh Loktantrik Congress. It was also requested that three other members namely Amarmani, Vikramjeet Maurya and Bachha Pathak of the Congress, not present at the moment may also be considered as members of the new faction. On the same day, the Speaker Keshari Nath Tripathi allowed the split under para 3 of the Tenth Schedule and allotted separate seats to the new party in the house. He reserved his orders for those members who were not present. On 21 October, 1997, Vikramjeet Maurya, Amarmani Tripathi and Bachha Pathak presented themselves before the Speaker wanting to be inducted as Uttar Pradesh - I - Loktantrik Congress members. The Speaker agreed.

On 24 October, 1997, a petition was instituted against Han Kishan, member of BSP, by Mayawati, leader of the BSP Legislature Party on the charge that Han Kishan had violated the party Whip that was issued during the confidence motion of Kalyan Singh, the then Chief Minister of Uttar Pradesh. Another petition dated 11 November, 1997 was instituted against Han Kishan by R.K.Chaudhuri on similar grounds. In the meantime on 25 January, 1998, Kishan resigned from the membership of the House.

On 25 February, 1998, the Speaker, Keshri Nath Tripathi gave a common a order on both the petitions. The petition against Han Kishan was declared not a pressed and was dismissed. The order also laid down that the Whip was not in accordance with the provisions of law nor was it proved that it was issued to Han Kishan551.

On 24 October, 1997, twelve petitions were instituted against Vansh Narain Singh and eleven others, by Mayawati, leader of Bahujan Samaj Party Vidhan Dal under the Members of U.P. Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987. Similarly, R.K. Chaudhuri MLA of BSP, also filed twelve

petitions, one against each of the aforesaid 12 MLAs on 11 November, 1997. The pleas of both the petitioners were identical. While replying to the petitions, it was claimed by the respondents that there was a split in the BSP Legislature Party whereby on 21 October, 1997, under the leadership of Markandey Chand, 26 members had formed a separate group called Janatantrik Bahuwan Samaj Party (JBS). The Jantantrik Bahuwan Samaj Party further broke up on 15 January, 1998.

On 23 March, 1998, the Speaker, Keshri Nath Tripathi taking into consideration the evidences presented before him during the proceedings, dismissed the petitions filed by Mayawati and RK. Chaudhury on the ground that, the Whip issued by the BSP leader Mayawati was not in accordance with the provisions of law and the respondents did not suffer from any I disqualification under para 2(1) of the Tenth Schedule to the Constitution as they were within the ambit of Para 3 of the said Schedule. He also recognised 19 members left out after the second split as members of JBS in the U.P. Legislative Assembly.

All the eight members of the Bharatiya Kisan Kamgar Party by a letter dated 23 January, 1999 and received by the secretariat on 3 February, 1999, wrote to the Speaker that their party had merged with Lok Dal and that they should be recognised as the members of Lok Dal. On 16 March, 1999 Kokab Hamid, Parvez Hamilkhu, Samar Pal Singh, Rajpal Singh, Virendra Singh and Vijendra Arya and on 17 March, 1999, Banarasi Das Chandana and Gajendra Kumar Munna presented themselves in person before the Speaker. The Speaker by his order dated 17 March, 1999, recognised the merger under para 4 of the Tenth Schedule to the Constitution.552

On 3 December, 2000, Janata Dal (Raja Ram Pandey) in a meeting decided to merge with Jana Shakti Party, headed by Ram Vilas Paswan. On 4 December, 2000, an application was made to the Speaker seeking recognition of their merger with lana Shakti with Raja Ram Pandey as their leader. On the 4 December, the Speaker recognised the merger. A member, Ram Asre Paswan who was not able to present himself before the Speaker on 4 December, 2000 due to illness, did so on 5 February, 2001 and requested the Speaker that he be recognised as a member of the Jana Shakti Party. The Speaker agreed.

On 22 February, 2001, Markandeya Chand, leader of the Jantat©Tik Bahujan Samaj Party informed the Speaker that the party got split on 9 February, 2001, at State level. He stated that he had the support of 13 members and had formed a new group called JBSP (Markandeya Chand). Seven members were personally present before the Speaker. The Speaker, Keshri Nath Tripathi found that the seven members present before him constituted more than 1/3rd of the original strength of the party that was 19. He allowed the split and recognised the JBSP (Markandeya Chand) group. Later, Shivendra Singh joined on 23 February, 2001, Kasim Hasan on 23 February and Radhey Shyam Kori on 2 March, 2001. The Speaker recognised them as members of JBSP (M). Meanwhile on 23 February, 2001, JBSP (M) had decided to merge with the Lok Jana Shakti Party headed by Ramvilas Paswan. After all the ten members of JBSP (M) affirmed the decision, the Speaker by his order dated 4 March, 2001 recognised the merger\(^5\).

On 26 August, 2002, the Speaker of the Uttar Pradesh Vidhan Sabha passed an order recognizing the Lok Jan Shakti Party (Rajaram Pandey) as a group under para 3 of the Tenth Schedule as having legally split from the ‘Lok Jan Shakti Party’. Further, Rajaram Pandey was recognized as the leader of this party. On 8 October, 2002, the Speaker recognised the merger of the one member (Rajaram Pandey) Jan Shakti Party with the Samta Party. He also recognised Rajaram Pandey as the leader of the Samta Party in the House.

On 28 January, 2003, an order was passed recognizing a split in the Indian National Congress wherein 8 members, namely, Dinesh Singh, Shyam Narayan, Kameshwar Upadhyay, Vmod Kumar Yadav, Nawab Qazim Ali, Rajpal Tyagi and Akhilesh Kumar Singh were recognized as a group known as the All India - Congress under para 3 of the Tenth Schedule\(^6\).

On 3 February, 2003, the Speaker recognized a split in the All India Congress, wherein 4 members formed a new group known as the ‘Ekta Party’.

On 6 February, 2003, 3 out of the 4 members of the newly formed ‘Ekta - - Party’ were recognized as having merged into the Bahujan Samaj Party under para 4 of the Tenth Schedule.

\(^5\) Supra note 7, p. 57.
\(^6\) Ibid.
On 11 February, 2003, the Speaker passed an order under para 3 of the Tenth Schedule recognizing a split in the single member ‘Rashtriya Parivartan Dal’. Further, he upheld the formation of the ‘Rashtriya Alpsankhyak Party’ with Shri Mehboob All as the sole member of its legislature party.

In another order dated 2 April 2003, the Speaker upheld the split in ‘Apna Dal’ under para of the Tenth Schedule and further upheld the formation of a new group in the Uttar Pradesh Vidhan Sabha namely the Vastavik Apna Dal legislature party. Thereafter, on 4 April, 2003, the Speaker passed an order recognizing a merger of the ‘Vastavik Apna Dal with the Bahujan Samaj Party (BSP).

On 17 June, 2003, the Speaker passed an order whereby Rajaram, who was the sole member of the Samta Party’ legislature party, legally split under para 3 of the Tenth Schedule to form a new group namely Samta Party (Rajaram). The same day, by another decision the Speaker recognised the merger of Samta Party - with the Samajwadi Party.

On 2 September, 2003 the Speaker held that he had no objection to the merger of the one-member Janata Dal (U) into the Samajwadi Party (SP) as jji requisites of para 4 of the Tenth Schedule were met and para 2 could not be invoked to disqualify the members from the House In another order on the same day, the Speaker recognized the merger of another one member party, the Marijhi Majhwar Shoshit Samaj Dal’ into the Samajwadi Party (SP).

On 5 September, 2003, the Speaker passed an order recognizing a split in the single member Janata Dal Legislature Party with Sanjay Garg as its sole member and formation of a new group by the name of ‘Ekta Party’.

On 6 September, 2003 the Speaker passed an order whereby a split in the Bahujan Samaj Party (BSP) Legislature party was recognized 37 MLAs had split to form the ‘Lok Tantrik Bahujan Dal’. In another order on the same day, the Speaker recognized a merger of the ‘Lok Tantrik Bahujan Dal’ into the Samajwadi Party under para 4 of the Tenth Schedule.

On 9 September, 2003, the Speaker recognized the merger of the ‘Ekta Party’ with Sanjay Garg as its sole member into the Samajwadi Party (SP).

On 1 October, 2003, the Speaker passed an order recognizing a split in the Samajwadi Janata Party (Rashtriya) and formation of the new group known as the
Samajwadi Janata Party (Ram Govind) with Ram Govind as its one member. On the same day, in another order, the Speaker recognized a merger of the amajwadi Janata Party (Ram Govind) into the Samajwadi Party (SP) under para 4 of the Tenth Schedule.

On 24 October, 2003, the Speaker passed an order recognizing a split in the ‘Apna Dal’ and formation of a group by the name of Apna Dal (A). On the same day, the Speaker passed an order, recognizing the merger of the Apna Dal (A) into the Samajwadi Party (SP) under para 4 of the Tenth Schedule.

The Speaker on 30 October, 2003, recognized the merger of the single member National Lok Tantrik Party legislature party into the Samajwadi Party (SP).

On 23 February, 2004, the four member ‘Rashtriya Kranti’ Legislature Party merged into the Bharatiya Janata Party (BJP). The Speaker held that he had no objection to the same.

On 4 September, 2003, a petition was filed by Shri Swami Prasad Maurya, a member of the Bahujan Samaj Party (BSP) legislature party, praying for the disqualification of Surendra Vikram Singh along with 12 other members under para 2 and para 6 of the Tenth Schedule. The Speaker of the Uttar Pradesh Vidhan Sabha passed an order dated 7 September, 2005, whereby he dismissed this petition and recognized that the 13 members had split from the Bahujan Samaj Party under para 3 of the Tenth Schedule.

On 10 June, 2006, the Speaker passed an order allowing a writ petition by Yogesh Pratap Singh of the ‘Lok Tantrik Bahujan Dal’ against Surendra Vikram Singh and four others. The Speaker held that these members stood disqualified from the membership of the House under para 2(1)(a) of the Tenth Schedule as they had defected to the Bahujan Samaj Party.

A petition dated 23 June, 2006, was filed by Shivpal Singh Yadav of the Samajwadi Party against 5 members on the ground that they were disqualified from being members of the House under para 2 of the Tenth Schedule. In an order dated 19 August, 2006, the Speaker held that all 5 members had incurred a disqualification
under para 2(1)(a) of the Tenth Schedule and disqualified them from being members of the House\textsuperscript{555}.

On 23 May, 2007, the Speaker passed an order recognizing the merger of the single member Bharatiya Jan Shakti Legislature Party into the Bahujan Samaj Party under para 4 of the Tenth Schedule.

On 3 June, 2007, the Speaker passed an order recognizing the merger of the Uttar Pradesh United Democratic Front into the Bahujan Samaj Party (BSP) with Haji Yaku as its sole member On 5 July, 2008, the Speaker passed an order recognizing the merger of the single member Janata Dal United Legislature Party into the Bahujan Samaj Party (BSP) with Dhananjay Singh as its sole member.

On 8 July, 2008, the Speaker passed an order recognizing the merger of the ‘Jan Morcha Party’ into the Bahujan Samaj Party with Shri Dharampal Singh as its sole member under para 4 of the Tenth Schedule.

On 16 September 2011 Uttar Pradesh Assembly speaker Sh. Sukhdev Rajbhar disqualified BSP MLA, Fareed Manfooz Kidwai, on a petition field by BSP state president Swami Prasad Manray order para 2 (1) of the tenth schedule\textsuperscript{556}.

On 4 October 2011 UP assembly speaker disqualified BSP MLAs, Sher Bahadur Singh, on a petition field by BSP state president Swami Prasad Manaya\textsuperscript{557}.

On 27 August BSP state president Swami Prasad Maurya field petition against Sh. Bhagwan Sharma @ Guddu Pandit under Tenth Schedule of Indian Constitution on ground that respondent joined Swajwadi Party. Speaker allowed the petition and disqualified respondent by his order dated 13 Oct. 2011\textsuperscript{558}.

On 17 Oct. U.P. Assembly speaker disqualified fourth BSP MLA\textsuperscript{559} on joining Smajwadi party\textsuperscript{560}.

\textsuperscript{555} The Uttar Pradesh Gazette, Extra Ordinary, dt. 19 Aug. 2006.
\textsuperscript{559} Krishan Kumar
On Nov. 19, 2011 U.P. Assembly speaker disqualified 2 MLAs\textsuperscript{561} of BSP under para 2 (1) of the Tenth Schedule on a petition filed by State President Swami Prasad Maurya\textsuperscript{562}.

(xv) West Bengal

On 24 December, 1997, the Samajwadi Party split when the State President Syed Nawab Jam Mirza and General Secretary Shahanshah Jehangir joined BJP along with 150 active members. Syed Mirza a third time MLA accused the SP functionaries of cornering all powers and making no sincere efforts to improve the lot of the minorities.

Atish Ch. Sinha, leader of the opposition and leader of the Congress Opposition Party ified eight petitions in the year 1998 against Sobhan Chattopadhyay, Pankaj Banerjee, Sital Kumar Sardar, Gulsan Mallick, Sanjoy Bakshi, Ashoke Mukherjee, Sabuj Dutta and Tushar Kanti Mandal under para 2(1)(a) of the Tenth Schedule to the Constitution on the ground that they had voluntarily given up the membership of Congress and joined the West Bengal Trinamool Congress.

Sobhan Deb Chattopadhyay in his reply denied the charges but subsequently tendered his resignation from the Bengal Legislative Assembly. The resignation was accepted by the Speaker. The three respondents namely Pankaj Banerjee, Sital Kumar Sardar and Gulsan Mallick submitted that there had been some misgivings which had since been cleared after discussion with Atish Chandra Sinha. They expressed satisfaction with the continuation of their membership of the Congress. The order passed by the Speaker in the three cases was as follows:

"Under the Defection Act and Rules voluntarily defecting former party and joining another party is an offence and may result in termination of membership of the Legislative Assembly or Lok Sabha, as the case may be, if he is a member. The offence cannot be rectified by the concerned Member rejoining his former party. But if the offence is not proved then the membership cannot be terminated. As the petitioner, the Leader of the Opposition who has to prove his case in the trial is not willing to proceed, I find that no purpose will be served continuing the present

\textsuperscript{561} Deshant Pradesh Chauhan, Jitender Kumar
\textsuperscript{562} The Uttar Pradesh Gazette, Extraordinary, dt. 20 Nov. 2011.
proceedings. As such all the proceedings may be dropped and the petitioner and the respondents may be intimated accordingly.”

Proceedings regarding the other four respondents were continued till March 2001 when the Speaker held that the petitioner was no longer interested in pursuing this matter as evidenced by the non-presentation of the petitioner in various proceedings of the case. The matter was dismissed for non-prosecution.

Atish Chandra Sinha also filed a petition against Subrata Mukherjee under para 2(1) (a) of the Tenth Schedule to the Constitution. He contended that Subrata Mukherjee in spite of being elected to the West Bengal Legislative Assembly in 1996 as a candidate of the Congress had filed his nomination in the election to Calcutta Municipal Corporation as a candidate of separate political party namely West Bengal Trinamool Congress and thus he had wilfully left the Congress. The Speaker while deciding the matter in February 2001, rejected the petition for non-prosecution on the grounds of non-attendance of the petitioner in various hearings.

On 6 January, 2000, two leaders of Forward Block, constituent of the ruling left front joined the Trinamool Congress along with two Congress legislators. The two Forward Block leaders who joined TC were Somen Das (MLA) and senior leader Dipak Sengupta. The two Congress MLAs who also crossed over were Biplab Roychowdhury and Debishankar Panda.

On 14 February, 2005 a joint petition was filed by Pankaj Banerjee, Leader of Opposition and Sobhanded Chattopadhyay, Chief Opposition Whip against Sibdas Mukherjee and Smt. Nayna Bandyopadhyay under para 2 of the Tenth Schedule of the Constitution read with rule 6 of Members of West Bengal Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986 on the ground that they had voluntarily given up the membership of the All India Trinamool Congress. It was contended that they had defected to Indian National Congress as they had actively taken part in campaigning for the Indian National Congress in the Lok Sabha elections. Subsequently, Sibdas Mukherjee himself tendered his resignation on 31 March, 2006 and the petition against him was disposed off as it became infructuous. The petition against Smt. Nayna Bandyopadhyay was rejected as the petitioner did not

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563 Supra Note 7, p. 61.
appear and the Speaker dismissed the petition with the observation that it appeared that the petitioner was not interested in pursuing the petition.

On 24 May, 2005 a petition was filed by Pankaj Baneilee, Leader of Opposition against Subrata Mukherjee under para 2 of the Tenth Schedule of the Constitution read with rule 6 of Members of West Bengal Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986. The ground was that Subrata Mukherjee had voluntarily given up the membership of the AU India Trinamool Congress when he had filed nomination papers to the Kolkata Municipal Corporation on the ticket of the Indian National Congress. However on 17 March, 2006, prior to the final hearing Subrata Mukhejee himself tendered his resignation and the petition stood dismissed.

On 30 January, 2009 petitions were filed by Dr. Manas Ranjan Bhuniia, Leader of the Indian National Congress Legislature Party against Somendra Nath Mitra and Sudip Bandyopadhyay under para 2 of the Tenth Schedule of the Constitution read with rule 6 of Members of West Bengal Legislative Assembly (Disqualification on Grounds of Defection) Rules, 1986. The petitioner contended that both respondents had voluntarily given up the membership of the Indian National Congress on whose ticket they were elected, when the former had joined the Pragatischil Indira Congress and the latter had defected to All India Trinamool Congress. The Speaker in his order dated 6 March 2009 held that Mitra had not contravened the allegation that he had voluntarily given up the membership of the Indian National Congress despite being given sufficient opportunity and he stood disqualified from the membership of the West Bengal Legislative Assembly. In another order on the same day the Speaker held that the other respondent had also produced no material to controvert the allegations or denied them and was therefore disqualified and his membership of the house stood terminated\textsuperscript{564}.

\textsuperscript{564} Kolkata Gazettee, Extraordinary, dt. 30 January, 2009.
### Tables

(i) **Cases of Disqualification in Haryana Legislative Assembly**

Table - 1

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>Year</th>
<th>Date when Petition given</th>
<th>Name(s) of Petitioner(s)</th>
<th>Name(s) of Respondent(s)</th>
<th>Grounds</th>
<th>Decision</th>
<th>Remarks, if any.</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>1989</td>
<td>27.12.1989</td>
<td>Shri Uday Bhan</td>
<td>Shri Taryab Hussain</td>
<td>Voluntary giving up membership of Lok Dal (B) Party and joining Congress (I) Political Party.</td>
<td>Dismissed on 3.1991</td>
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</tr>
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</table>

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565 Based on Haryana Official Gazzette, Extraordinary and Haryana Vidhan Sabha Bulletin. For details see Annexure H.
<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Year</th>
<th>Date when Petition given</th>
<th>Name (s) of Petitioner(s)</th>
<th>Name(s) of Respondents(s)</th>
<th>Grounds</th>
<th>Decision</th>
<th>Remarks, if any.</th>
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<tr>
<td>7.</td>
<td>1999</td>
<td>1.12.1999</td>
<td>Shri Narinder Singh</td>
<td>Shri Subhash Chander</td>
<td>Voluntarily giving the membership of his political party and abstaining from voting in the House contrary to the direction of the Chief Whip.</td>
<td>Dismissed on 1.3.2000.</td>
<td>by Shri Shorawala, the Supreme Court stayed the orders of the High Court.</td>
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<tr>
<td>8.</td>
<td>1999</td>
<td>1.12.1999</td>
<td>Shri Narinder Singh</td>
<td>Shri Ram Sarup Rams</td>
<td>Voluntarily giving up the membership of his political party and abstaining from voting in the House contrary to the direction of the Chief Whip.</td>
<td>Dismissed on 1.3.2000.</td>
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<tr>
<td>10.</td>
<td>1999</td>
<td>1.12.1999</td>
<td>Shri Narinder Singh</td>
<td>Jagdish Yadav</td>
<td>Voluntarily giving up the membership of his political party and abstaining from voting in the House contrary to</td>
<td>Dismissed on 1.3.2000.</td>
<td></td>
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<tr>
<td>Sl. No.</td>
<td>Year</td>
<td>Date when Petition given</td>
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<td>15.</td>
<td>2004</td>
<td>15.6.2004</td>
<td>Shri Nafe Singh Rathi</td>
<td>Shri Shim Sam</td>
<td>Joining the political party i.e. Indian National</td>
<td>Allowed on 25.6.2004</td>
<td>Honble Supreme Court stayed the operation of the order passed by the Speaker in the case except right to vote vide order dated 28.6.2004.</td>
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<tr>
<td>Sl. No.</td>
<td>Year</td>
<td>Date when Petition given</td>
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<tr>
<td>17.</td>
<td>2004</td>
<td>15.6.2004</td>
<td>Shri Nafe Singh Rathi</td>
<td>Shri Moola Ram</td>
<td>Joining the political party i.e. Indian National Congress despite being Independent.</td>
<td>Allowed on 5.11.2004</td>
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<td>18.</td>
<td>2004</td>
<td>15.6.2004</td>
<td>Shri Nafe Singh Rathi</td>
<td>Shri Dariyao Singh</td>
<td>Joining the political party i.e. Indian National Congress despite being Independent.</td>
<td>Allowed on 5.11.2004</td>
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<td>19.</td>
<td>2004</td>
<td>15.6.2004</td>
<td>Shri Krishan Lal. MLA</td>
<td>Shri Tejvir, MLA</td>
<td>Voluntarily giving up membership of his original political party.</td>
<td>Allowed on 14.1.2005</td>
<td>The Respondent had resigned his seat on 14th January Assembly</td>
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<td>2008</td>
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<td>Shri Shadi Lal Batra, MLA</td>
<td>Ch. Bhajan Lal, MLA</td>
<td>Voluntarily giving up membership of his original political party. (INC)</td>
<td>Allowed on 25.3.2008</td>
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<td>21.</td>
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<td>Shri Jitender Malik, MLA</td>
<td>Shri Dharun pal Singh, MLA</td>
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<td>Shri Ramesh Gupta,</td>
<td>Shri Rakesh Kamboj, MLA</td>
<td>Voluntarily giving up membership</td>
<td>Allowed on 13.3.2008</td>
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<td>Shri Narender Singh, MLA Shri Zile Ram, MLA Vinod Bhayana, MLA</td>
<td>Voluntarily giving up membership of his original political party. (Haryana Janhit Congress)</td>
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<td>Shri Satpal Sangwan, MLA</td>
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(ii) Cases of Split in Haryana Legislative Assembly Table -2

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<th>Sl. No.</th>
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<th>Party from which split claimed</th>
<th>Claim made by</th>
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<th>Name of Breakaway/ splitaway group</th>
<th>Decision</th>
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<td>5.</td>
<td>1993</td>
<td>2.9.1993</td>
<td>Haiyana Vikas Party</td>
<td>Shri Amar Singh and Soother MLAs</td>
<td>Split in Haiyana Vikas Party</td>
<td>Haiyana Vikas Party (A)</td>
<td>Allowed on 29.10.1993,</td>
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^566 Based on Haryana Vidhan Sabha Bulletin
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<th>Party seeking merger</th>
<th>Date when claim for merger made</th>
<th>Claim made by</th>
<th>Nature of claim/request made</th>
<th>Name of Party merged with</th>
<th>Decision</th>
<th>Remarks, if any.</th>
</tr>
</thead>
</table>

(iii) Cases of Merger in Haryana Legislative Assembly

Table - 3

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567 Based on Haryana Vidhan Sabha Bulletin.
### Table 4

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Year</th>
<th>Party seeking merger</th>
<th>Date when claim for merger made</th>
<th>Claim made by</th>
<th>Name of Party merged with</th>
<th>Decision</th>
<th>Remarks, if any.</th>
</tr>
</thead>
</table>

(iv) **Cases where members were treated Unattached in Haryana Legislative Assembly**

Review

Since the Constitution Amendment came into force, there have been many more cases of defection from various parties in different State Legislatures. Some of things that happened were bizarre, to say the least. Notwithstanding the Anti-Defection Law, some of the Governments, inter alia, in Nagaland, Mizoram, Andhra Pradesh, Tamil Nadu, Pondicherry, Manipur, Arunachal Pradesh, Goa, Gujarat,

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568 Based on Haryana Official Gazette, Extra ordinary and Haryana Vidhan Sabha Bulletin
569 Constitution (Fifty-second Amendment) Act, 1985
Meghalaya and Sikkim were brought down through defections.\textsuperscript{570} There were problems under the Anti-Defection Law in several other States as well, as in Madhya Pradesh, Orissa, Maharashtra, Bihar, Karnataka, West Bengal, Delhi, Kerala, Uttar Pradesh, Punjab, Himachal Pradesh, Haryana and Rajasthan. There were reports even in the new States of Chhattisgarh and Jharkhand.

In State legislatures total 151 MLAs and 1 MLC were disqualified under paragraph 2 of the Tenth Schedule. 127 were disqualified under paragraph 2(1)(a) and 25 were disqualified under paragraph 2(1)(b) of the Tenth Schedule. 1 MLA was disqualified in Andra Pradesh, 7 in Assam, 12 in Goa, 1 in Gujarat, 14 in Haryana, 16 in Karnataka\textsuperscript{571}, 8 in M.P., 7 in Maharashtra, 9 in Manipur, 8 in Maghalaya, 15 in Nagaland, 2 in Orissa, 23 in Punjab, 3 in Tamil Nadu, 16 in U.P., 2 in west Bengal. the order of disqualification of 16 MLAs in Karnataka was quashed by Supreme Court on 13 May 2011. Petitions against 5 MLAs are pending in Haryana legislative assembly. Recently in 2011 6 BSP MLAs were disqualified in U.P. In State legislatures all 68 claims were allowed before 1 January 2004. In State legislatures under paragraph 4 of the Tenth Schedule of Indian Constitution all 87 claims of merger were allowed by Speakers. Recently on 9 November 2010 5 MLAs of HJC (BL) merged with INC. In Haryana on 10 October 2010 speaker Karnataka legislative assembly disqualified 11 BJP MLAs and 5 independent MLAs on a petition filed by chief minister Sh B.S. Yeddyurappa on 6 October 2010. All 16 MLAs filed a writ petition (civil) 32660-32670 in Karnataka high court which were dismissed. In civil appeal Nos 4444-4476 of 2011 supreme court set aside the order of Speaker dated 10 October 2010 and judgment of Karnataka high court and restored the membership of all 16 MLAs.


\textsuperscript{571} Order of disqualification of all 16 MLAs was quashed by Supreme Court in Bablechandra L. Jarkiholi others V. B.S. Yeddyurappa others. The Hindu, 14 May, 2011