"An elected member of a legislature who had been allotted the reserved symbol of any political party can be said to have defected, if after being elected as a member of either house or of legislative assembly or legislative council of a state he voluntarily renounces allegiance to or association with such political party, provided his action in not in consequence of a decision of the party concerned"  
- Prof. Madhu Dandavate 630

This Chapter deals with conclusions and suggestions arrived at as a result of discussions in the previous chapters.

A. Conclusion

In conclusions, an appraisal of whole study is given. It is earnestly hoped that the conclusions drawn and the suggestions presented on the basis of the critical study in this discourse will be a real contribution to the field.

1. Defection

The evil of defection is not confined to India only. It is rampant, perpetuating and flourishing in other countries having Parliamentary form of Government.631 In a plain language defection632 simply means switching over one’s loyalty from one political party to another political party. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. 633 The year of 1967 saw the formation of coalition government and thereby an unhealthy


632 The term defection has been derived, as the dictionary meaning suggests, from the Latin word 'defectio', indicating an act of abandonment of a person or a cause to which such person is bound by reasons of allegiance or duty, or to which he has willfully attached himself.

633 The Statement of Objects and Reasons accompanying the constitution (Fifty second Amendment) Act, 1985.
tradition of defection resulting in *synthetic majority* in Indian democracy.\(^{634}\)

Defection\(^{635}\) is a process by which a person abandons or withdraws his allegiance or duty. It had its origin in the British House of Commons where a legislator changed his allegiance when he crossed the floor and moved from the Government to the opposition side, or vice-versa.\(^{636}\)

2. **Defections in India**

Indian politics has been no exception to this phenomenon of defections. In fact, the history of defections in India can be traced back to the days of Central Legislature when Shri Shyam Lal Nehru, a member of Central Legislature changed his allegiance from Congress Party to British side. To cite one more, in 1937 Shri Hafiz Mohammed Ibrahim, who was elected to the Uttar Pradesh Legislative Assembly on the Muslim League ticket defected to join the Congress.

In late sixties, the phenomenon of changing political party for reasons other than ideological engulfed the Indian polity. According to the Chavan Committee Report (1969), following the Fourth General Elections, in the short period between March 1967 and February 1968, the Indian political scene was characterized by numerous instances of change of party allegiance by legislators in several States. Out of roughly 542 cases in the entire two-decade period between the First and the Fourth General Elections, at least 438 defections occurred in these 12 months alone. Among Independents, 157 out of a total of 376 elected, joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of various States, 116 were included in the Councils of Ministers which they helped to form by defections.\(^{637}\)

3. **Evolution of Anti-defection Law in India**

The genesis of the endeavours towards bringing forward a legislation in India for curbing the malaise of defections can be traced to a private member’s resolution moved in the Fourth Lok Sabha on 11 August 1967 by Shri P. Venkatasubbaiah, When Shri P. Venkatasubbaiah’s resolution in Lok Sabha was under discussion, the propriety of legislators changing their allegiance from one party to another and their

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\(^{635}\) Traditionally, this phenomenon was known as ‘floor crossing’

\(^{636}\) See Supra Chapter Inn. 1-8

\(^{637}\) Ibid. n. 19
frequent crossing of the floor and its effect on the growth of Parliamentary democracy was actively deliberated upon in the Presiding Officers’ Conference held in New Delhi on 14 and 15 October 1967. After due deliberations, the Presiding Officers’ Conference left the task of taking steps towards curbing defections to the political parties and the Government.

Shri Venkatasubbaiah’s resolution was discussed in Lok Sabha on 24 November and 8 December 1967. The resolution in its final form as passed unanimously by the Lok Sabha on 8 December 1967, read as under:

“This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard.”

In consonance with the opinion expressed in the resolution, a Committee L as mentioned earlier, was set up by the Government under the chairmanship of the then Union Home Minister, Shri Y.B. Chavan. The other members of the Committee were Shri P. Govinda Menon, the then Union Law Minister, Shri Ram Subhag Singh, the then Minister of Parliamentary Affairs and Communications and Sarvashri P. Venkatasubbaiah, Bhupesh Gupta, P. Ramamurti, S.N. Dwivedy, Madhu Limaye, K. Anbazhagan, Jaya Prakash Narayan, Raghuvir Singh Shastrri, N.C. Chatterjee, M.C. Setalvad, C.K. Daphtary, S. Mohan Kurnaramangalam, Prof. N.G. Ranga, Prof. Balraj Madhok, Dr. Karni Singh and Dr. H.N. Kunzru.

On 18 February 1969, the Report of the Con was laid on the Table of Lok Sabha. The Committee recommended that a Committee of the representatives of the parties in Parliament and State Assemblies be constituted to draw up a code of conduct for the political parties with particular reference to the problem of defections and to observe its implementation by discussions among themselves.

It also recommended that no person who was not a member of the tower House should be appointed as Minister/Chief Minister. The Committee advised for a Constitutional amendment in this regard without affecting the existing incumbents in office.

The Committee further recommended that a defector should be debarred for one year or till such time he resigned his seat and got re-elected, from appointment to the office of a Minister, Speaker, Deputy Speaker or any post carrying salary and
allowances to be paid from the Consolidated Fund of the Union or the States or from the funds of the Government Undertakings.638

4. **The Constitution (Thirty-second Amendment) Bill, 1973**

As the YB. Chavan Committee’s recommendations could not provide adequate solution to the problem of defections, the Constitution (Thirty-second Amendment) Bill, 1973 was introduced during the Fifth Lok Sabha on 16 May 1973 for constitution providing for disqualification on defections.

The Bill provided for disqualification of a member from continuing as a member of either House of Parliament, if he voluntarily gave up membership of his political party which sponsored him as a candidate at elections or if he without prior permission voted or abstained from voting in the House contrary to any direction issued by the political party to which he belonged. The Bill further provided that such person shall not be disqualified if he voluntarily gave up his membership of such a political party by reason of a split therein. Numerical strength for a split was however not specified. The Bill did not apply to members of unrecognized political parties, independents and nominated members.

The Bill vested powers to decide the question of disqualification of members, on reference by the political party or any person or authority authorized by it, in the President of India in the case of members of Parliament and the Governors in the case of members of State Legislatures.

On 13 December 1973, a motion for reference of the Constitution (Thirty-second Amendment) Bill, 1973 to a Joint Committee of the Houses of Parliament was adopted in the Lok Sabha. On 17 December 1973, the concurrence motion in this respect was adopted in the Rajya Sabha. The Joint Committee of the Houses of Parliament became defunct upon dissolution of Fifth Lok Sabha on 18 January 1977.639

5. **The Constitution (Forty-eighth Amendment) Bill, 1978**

On 28 August 1978, another attempt was made in this direction by bringing forward the Constitution (Forty-eighth Amendment) Bill, 1978 in Lok Sabha. Several members belonging to both ruling party and opposition parties opposed the Bill at the introduction stage itself. The members took serious objections to the alleged misrepresentation of facts in the Statement of Objects and Reasons inasmuch as the

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638 Ibid. n 32-37
639 Ibid. n 70-71
members were not consulted over the provisions of the Bill, whereas the Statement of Objects and Reasons of the Bill said “the problem cuts across all parties. It has been examined in consultation with the leaders of political parties”. Some salient features of the Bill were the following:

(i) Independent and nominated members were allowed to join political parties after election only once.

(ii) A member belonging to a political party would be disqualified if he voluntarily gave up the membership of the political party to which he belonged or he was expelled from the party for voting against party direction without prior permission subject to expulsion within 30 days from such voting.

(iii) In case one-fourth of the members of legislature party or where the strength was less than 20, not less than five members formed a new political party and such party had been recognized by the Presiding Officer or registered with the Election Commission, the members of the new political party would not be disqualified.

(iv) The Bill applied to the members of those political parties only, which were registered with the Election Commission or recognized by the Presiding Officer.

In view of stiff opposition, the Minister withdrew the motion for leave to introduce the Bill by the leave of the House.\textsuperscript{640}

6. **Introduction of Anti-defection Law**

Immediately after the general elections which were held in December 1984, the President of India said in his Address to both Houses of Parliament assembled together on 17 January 1985 that the Government intended to introduce in that session a Bill to outlaw defections. In fulfillment of that assurance, the Government introduced the Constitution (Fifty-second Amendment) Bill in the Lok Sabha on 24 January 1985. The Statement of Objects and Reasons appended to the Bill stated:

*The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the*

\textsuperscript{640} Ibid. n 72-82
current session of Parliament an anti-defection Bill. The Bill is meant for out-lawing
defection and fulfilling the above assurance.

In order to bring about a national consensus on the Bill, the Prime Minister
held prolonged consultations with the leaders of Opposition parties/groups. The
Government acceded to the demand of dropping a controversial clause from the Bill
relating to disqualification of a member on him expulsion from his political party for
his conduct outside the House. The Bill was passed by Lok Sabha and Rajya Sabha on
30 and 31 January 1985, respectively. It received the President’s assent on 15
February 1985. The Act, which came into force with effect from 1 March 1985 after
issue of the necessary notification in the Official Gazette, added the Tenth Schedule to
the Constitution.

The Members of Lok Sabha (Disqualification on ground of Defection) Rules,
1985 framed by the Speaker, Lok Sabha (in terms of para 8 of the Tenth Schedule) for
giving effect to the provisions of the Tenth Schedule came into force w.e.f. 18 March
1986.  

7.  The Tenth Schedule of The Constitution of India

The Fifty second Amendment Act, 1985, made necessary changes in Articles
101, 102, 190 and 191, besides adding the Tenth Schedule in the Constitution. The
Tenth Schedule contains the law relating to poliical, The Schedule contains
provisions as to disqualification on the round of defection along with certain
exceptions. These provisions are equally applicable to the members of either House of
Parliament and either House of Legislature of a State. These are discussed below.  

(i) Disqualification on Ground of Defection (Paragraph 2)

1. Paragraph 2 of the Tenth Schedule provides that a member of a House
   belonging to any political party shall be disqualified for being a member of the
   House-
   (a) if he voluntarily gives up his membership of such political party; or
   (b) if he votes or abstains from voting in such House contrary to any direction
       issued by the political party to which he belongs, without obtaining the prior
       permission of such political party.

   Such direction (i.e., whip) may be issued by the political party or any person
   or authority authorised by it, in this behalf.

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641 Ibid. n 98-99
642 See Supra Chapter 2 n. 2
The words “voluntarily given up his membership of such political party”, been held not synonymous with “resignation” and would have a wider connotation. It has been held that even in the absence of a formal resignation membership, an inference could be drawn from the conduct of a member that he had voluntarily given up his membership of the political party to which he belonged⁶⁴３. Thus, the act of voluntarily giving up the membership of the political party, may be express or implied, non-fulfillment of formalities for joining a party is of no consequence⁶⁴⁴.

In Ravi S. Naik v. Union of India⁶⁴⁵, two MLAs, who had been elected on the ticket of MGP party, accompanied the leader of Congress (I) Legislative Party, when he met the Governor to show that he had the support of 20 MLAs. The decision of the Speaker declaring them disqualified from membership of the House was upheld by the Apex Court.

When a person is thrown out or expelled from the party which had set him up as a candidate and got elected, would continue to be the member of that party. If such a person joins another (new) party, he would be said to have voluntarily given up the membership of the party which had set him up as a candidate⁶⁴⁶.

In M.P. Siugh v. Chairman, Bihar Legislative Council⁶⁴⁷, the petitioner, who had been elected to the Legislative Council on the ticket of the Indian National Congress, contested the Parliamentary election as an independent candidate. That being a matter of record, conclusion drawn by the Chairman that he had given up his membership of the Indian National Congress and thus incurred disqualification under Para 2(1)(a) of the Tenth Schedule, was held proper.

However, the member shall not be so disqualified, if his such voting or abstention has been condoned by such political party or authorised person, within fifteen days from the date of such voting or abstention.

In Kihota Hollohon v. Zachilhu⁶⁴⁸, the Supreme Court held that keeping in view the consequences of the disqualification, i.e., termination of the membership of a House, it would be appropriate that the direction or whip, which would result in such

⁶⁴⁴ Jagjit Sing v. State of Haryana, AIR 2007 SC 590. See supra chapter 5 for judicial approach
⁶⁴⁵ AIR 1994 sc 1558
⁶⁴⁶ G. Vishwanathan v. Hon’ble Speaker, T.N.LA., AIR 1996 sc 1060
⁶⁴⁷ AIR 2005 sc 69
⁶⁴⁸ AIR 1993 SC 412
disqualification under Para 2 (1) (b), should be so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction, would result in incurring the this qualification under the said Para, so that the member concerned would have foreknowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction.

The Orissa High Court in Ananga U.S. Deo v. Ranga Nath Mishra\textsuperscript{649}, has held that a whip issued to vote in favour of a candidate in election to Rajya Sabha was not valid and effective as it was not a matter relating to proceedings in the House.

Explanation attached to Para 2 provides that a member shall be deemed to belong to the political party by which he was set up as a candidate for election. If a member of a political party is nominated to the House as a member, he shall be deemed to belonging to that political party A person not belonging to any political party, if nominated to the House as a member, shall be deemed to belong to the political party of which he becomes a member before the expiry of six months from the date on which he takes oath as a member of the House under Article 99 or Article 188, as the case may be\textsuperscript{650}.

2. Clause (2) of Paragraph 2 provides that an independent member\textsuperscript{651} shall be disqualified for being a member of the House if he joins any political party after such election.

3. Clause (3) of Paragraph 2 provides that a nominated member shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date he takes oath as a member of the House.

\textbf{Exceptions (Paragraphs 4 and 5)}

Paragraphs 4 and 5 of the Tenth Schedule exclude the applicability of the provisions for disqualification under Para 2 in case of “merger” of the original political party with another political party, as also with respect to the Officers of the Houses of Legislature.

\textsuperscript{649} AIR 2001 Orissa 24
\textsuperscript{650} Explanation attached to Clause (1) of Para 2 of the Tenth Schedule
\textsuperscript{651} It means person elected as a member otherwise than as a candidate set up by any political party
(ii) **Merger of a Political Party with Another Political Party (Paragraph 4)**

Para 4 of the Tenth Schedule provides that a member shall not be disqualified for being a member of the House if his original political party has merged with another political party and he and any other members of his original political party—
(a) have become members of such other political party or of a new political party formed by such merger; or
(b) have not accepted the merger and opted to function as a separate group.

Thus, a member shall not be so disqualified if he either becomes a member of the merged party or keeps away from the merged party.

The merger of the party, for the purpose of Para 4, shall be deemed to have taken place only if not less than two thirds of the members of the legislative party concerned, have agreed to such merger.

The Supreme Court in Kihota Hollohon v. Zachilhu\(^652\), upheld the distinction between conception of “defection” and ‘merger’. The Court explained that the underlying premise in declaring an individual act of defection as forbidden was that lure of office or money could be presumed to have prevailed. This presumptive impropriety of motives would progressively weaken according as the numbers sharing the action. Therefore, a particular course of conduct commended itself to number of elected representatives might, in itself, lend credence and reassurance to a presumption of bona fides. What number could be said to generate a presumption of bona fides, would have to be left to the legislative wisdom, the Court ruled. The Court thus held that “merger” permissible under Para 4 of the Schedule, would not be defection, since such “floor crossing” was envisaged on the basis of honest dissent\(^653\).

(iii) **Exemption for Officers of the Houses (Paragraph 5)**

Paragraph 5 of the Tenth Schedule provides that a member of a political party having been elected as an Officer\(^654\) of the House, shall not be so disqualified under Paragraph 5, if-

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\(^652\) AIR 1993 SC 412  
\(^653\) See also Mayawati V. Markandey Chand, AIR 1998 SC 3340  
\(^654\) The term Officer of the House for this purpose, includes, the Speaker, the Deputy Speaker of the Lok Sabha as also of the Legislative Assembly of a State and the Deputy Chairman of Rajya Sabha as also the Chairman and Deputy Chairman of the Legislative Council of a State
(a) by reason of his election to such office, he voluntarily gives up the membership of his party and does not rejoin that party or other party so long as he holds that office; or
(b) he rejoins his original party after he ceases to hold such office.

Explaining the scope of Para 5, the Supreme Court in Luis Proto Barbosa v. Union of India, ruled that the exemption under this Para would be available where the Speaker, in view of the high office of the Speaker, on a question of propriety and to sustain the image of impartiality of that office, resigned from the membership of the political party to which he might have belonged prior to his election as Speaker.

The Court further said that the exemption would not be available where the Speaker defected from the party to which he belonged and resigned from the office of Speaker thereafter.

In Kihota Hollohon v. Zachillhu, the Supreme Court, by a majority of 3 to 2, upheld the constitutional validity of this Paragraph. The Court said that “the provisions are salutary and are intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections”. The provisions have been held not violative of the basic structure of the Constitution or any rights or freedoms under Articles 19, 25, 105 and 194.

In Kuldip Singh v. Union of India, the Apex Court has ruled that the provisions of Tenth Schedule, are applicable to the proceedings of the Legislatures and not to other acts/actions of the Legislatures.

(iv) Decision on Questions as to Disqualification on Ground of Defection (Paragraph 6)

Paragraph 6 of the Tenth Schedule provides that if any question arises as to whether a member of the House, has become subject to disqualification under this Schedule, the question shall be referred for decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final.

The question, as to whether the Chairman or the Speaker of a House has become subject to such disqualification, shall be referred for the decision of such

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655 AIR 1992 SC 1812
656 AIR 1993 SC 412
657 AIR 2006 SC 3127
658 Chapter 2 n 72-73
member of the House as the House may elect in this behalf and his decision shall be final.

Clause (2) of Paragraph 6 declares that all proceedings relating to any question as to disqualification of member, under the Tenth Schedule, shall be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be, proceeding in the Legislature of a State within the meaning of Article 212. It, thus, protects the validity of proceedings taken under Clause (1) of Para 6, from judicial scrutiny on the ground merely of irregularity of procedure.

Explaining the scope of the deeming provision in Paragraph 6 (2), the majority of the Supreme Court in Kihota Hollohon v. Zachulhu659, held that the finality Clause did not completely exclude the jurisdiction of the Courts under Articles 136, 226 and 227 of the Constitution. It did have the effect of limiting the scope of the jurisdiction, the Court said. In spite of the finality Clause, it was held, it would be open to the Court to examine whether the action of the authority under challenge was: (i) ultra vires the powers conferred or (ii) that it was in contravention of a mandatory provision of the law conferring power on the authority, or (iii) that it was vitiated by mala fides or was colourable exercise of power based on extraneous and irrelevant considerations, or (iv) that there was non-compliance with the rules of natural justice, or (v) that the decision was perverse or based on no evidence.

The Court further ruled that the “Speaker/Chairman, while exercising powers and discharging functions under the Tenth Schedule, would be acting as Tribunal adjudicating rights and obligations under this Schedule and their decisions in that capacity would be amenable to judicial review. The power to resolve such disputes vested in the Speaker or Chairman, is a judicial power, not immuned from judicial scrutiny under Article 122 or 212”, though the scope of judicial review is limited, i.e., on the ground of mala tide, colourable power, irrelevant considerations or violation of natural justice.

It was further explained that the proceedings of disqualification would, in fact, not be before the House, but only before the Speaker/Chairman, as a specially designated authority and his decision would not be the decision of the House, nor it would be subject to the approval by the House. There would, therefore, be no

659 AIR 1993 SC 412
immunity under Articles 122 and 212 from judicial scrutiny of the decision of the Speaker/Chairman exercising power under Paragraph 6 (1).

The Court justified the vesting of judicial power in the Speaker/Chairman, for they hold a pivotal position in the scheme of Parliamentary Democracy and were guardians of the rights and privileges of the House. Vestiture of power to adjudicate questions under the Tenth Schedule in such a constitutional functionary should not be considered exceptional, the Court said. It was also held not violative of basic feature of democracy. The Court also rejected the contention that vesting of this power in the Speaker would vitiate the provision on the ground of likelihood of political bias.

In Kashinath G. Jalmi v. The Speaker\(^{660}\), the Supreme Court held that the Speaker while functioning under the Tenth Schedule had no power to review his decision on the question of disqualification, which question would be subject to correction only by judicial review.\(^{661}\)

(v) Bar of Jurisdiction of Courts (Paragraph 7)

Paragraph 7 of the Tenth Schedule provided that: ‘no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule”.

In Kihota Hollohon v. Zachillhu\(^{662}\), the Supreme Court declared Para 7 unconstitutional and invalid in so far as it affected the jurisdiction of the Supreme Court and the High Courts under Articles 136, 226 and 227 of the Constitution, requiring ratification by State Legislatures, in accordance with the Proviso to Clause (2) of Article 368, which procedure was not followed while enacting the provisions of Para 7.

Holding the provision of Para 7 severable from the rest of the provisions, the Supreme Court upheld the constitutional validity of the Tenth Schedule minus Para 7.

(vi) Disqualification Rules (Paragraph 8)

Paragraph 8 of the Tenth Schedule empowers the Presiding Officer of the House to make Rules for giving effect to the provisions of this Schedule. The Rules so framed are required to be laid before the House and are to take effect after the expiry of thirty days unless they are sooner approved or disapproved by the House. Any

\(^{660}\) AIR 1993 SC 1873. These observations were reiterated with approval in Jag/it Singh V. State of Haryana, AIR 2007 SC 590

\(^{661}\) Supra Chapter 2 n 74-87

\(^{662}\) AIR 1993 SC 412
wilful contravention by any person of these Rules may be dealt with by the Speaker/Chairman in the same manner as a breach of privilege of the House.

The Rules framed under Para 8 have been held to be procedural in nature and any violation of the same would amount to an irregularity in procedure, which would be immune from judicial scrutiny, in view of Sub-Para (2) of Para 6 of the Schedule.

Mere violation of a Rule is not enough to constitute violation of the provisions of the Tenth Schedule. But, compliance or non-compliance with the Rules would very much, help the authorities to decide whether there was violation of the constitutional provision envisaged in the Tenth Schedule.

8. Anti-Defection Law - Its Working

The Tenth Schedule to the Constitution which contains the law relating to defection was expected to check party hopping or floor crossing by elected representatives for ulterior considerations and personal benefits. But, it has failed to contain the menace. It is said to be faulty to the core and has become totally outdated in view of the increasing complexities of the polity and the poor quality of the persons manning it.

(i) Cases of disqualification under paragraph 2 of the Tenth Schedule

In Lok Sabha 26 petitions out of total 58 petitions were allowed by Speaker under paragraph 2 of the Tenth Schedule of Indian constitution. 25 petitions were dismissed and 7 rendered infructuous. Thus 26 members of Lok Sabha disqualified under Anti-defection law. In last Sh. Abu Ayes Mondal was disqualified on a petition filed by Sh. Basudeb Acharya in 2009.

In Rajya Sabha all four petitions were allowed by Chairman under paragraph 2 of Tenth Schedule. In result four MPs, i.e. Sh. Mufti Mohamad Sayeed, Satya Pal Malik, Jai Naryain Prasad and Isam Singh were disqualified.

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, 8 in M.P., 7 in Maharashtra, 9 in Manipur, 8 in Maghalaya, 15 in

663 Mayawati v. Markandeya Chand, AIR 1998 SC 3340; Kihota Hollohon V. Zachithu, AIR 1993 SC 412; Ravi S. Naik V. Union of India, AIR 1994 SC 1558

664 See Supra Chapter 3
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.

(ii) Claims of splits/ mergers

Before enforcement of the Constitution (91st Amendment) Act, 2003, total 22 cases were filed before speaker, Lok Sabha, out of which 20 were allowed and 2 were lapsed due to dissolution of Lok Sabha. In Rajya sabha all 10 claims were allowed by Chairman under paragraph 3 of the Tenth Schedule. In State legislatures all 68 claims were allowed before 1 January 2004.

In Lok Sabha 12 out of total 13 claims of merger were allowed by speaker. In Rajya Sabha all 14 claims of merger were allowed by Chairman under paragraph 4 of the tenth schedule. In State legislatures under paragraph 4 of the Tenth Schedule of Indian Constitution all 87 claims of merger were allowed by Speakers.

(iii) Recent cases of disqualification

(a) Haryana (10 petitions against 5 MLAs are under consideration)

In October 2009 assembly Haryana Janhit Congress (BL) party got 6 seats in 90 members Haryana legislative assembly. On 9 November 2009 four out of six HJC (BL) party MLAs claimed merger with Indian National Congress which was allowed by Speaker on same day i.e. 9 November 2009. Next day fifth MLA of HJC (BL) party filed application before Speaker for merger which were allowed on same day i.e. 10 November 2009. On 9 November party president of HJC (BL) filed a petition before speaker, Haryana legislative assembly, for disqualification of all five MLAs under paragraph 2(1)(a) of the tenth schedule which is still under consideration. On 2 February 2010 Ashok Aarora, MLA and state president of Indian national Lok Dal, also filed a 3 petitions for disqualification of all 5 above mention MLAs which is also pending till date. On 3 February 2010 Sh. Sher Singh Barsami also filed 3 separate petition against 5 MLAs who merged with INC for disqualification under para 2 of Tenth Schedule which are also under consideration. On 23 February 2010 Sh Ajay Singh Chautala, MLA, INLD, also filed 3 petitions for

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665 Bal Chandra, L. Jarkiholi and Others Vs. B.S. Yeddyurappa and Ors, Civil Appeal No. 4444-4476/2011 http://www.judis.nic.in
666 The Tribune, Chandigarh, Nov. 10, 2009.
667 The Tribune, Chandigarh, Nov. 11, 2009.
668 Supra Note. 36.
disqualification of 5 MLAs. On 20 December 2011 Punjab and Haryana high court declared all 5 MLAs unattached and ordered speaker, Haryana legislative assembly to dispose all above mention petitions on or before 30 April 2012. Bench of justice M.M. Kumar and justice Gurdev Singh rulded that all 5 MLAs would not be deemed to be members of INC and HJC (BL) till the decision of disqualification petitions. High court also held that all 5 MLAs shall not hold any office till the decision on disqualification petitions. The order of Punjab and Haryana high court was stayed by 2 judge bench of Supreme Court on 4 January 2012.

(b) Karnataka (in 2011 Supreme Court restored membeship of 16 MLAs)

On 10 October 2010 speaker Karnataka legislative assembly disqualified 11 BJP MLAs and 5 independent MLAs on a petition field by chief minister Sh B.S. Yeddyurapa 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.

(c) Uttar Pradesh (6 BSP MLAs were disqualified before 2012 assembly election)


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671 The Hindu, New Delhi, Oct. 11, 2010.
672 Bal Chandra, L. Jarkiholi and Others V. B.S. Yeddyurappa and Ors, Civil Appeal No. 4444-4476/2011 http://www.judis.nic.in.
disqualified 2 MLAs of BSP under para 2 (1)(a) of the Tenth Schedule on a petition filed by State President Swami Prasad Maurya.

9. **Lacunae/ issues in Anti-defection law**

(i) **The power of Speaker or chairman to decide questions**

The one issue in implementing the law Speakers have not always exercised their power to decide whether or not a has earned disqualification as a result of ‘defection’ objectively and impartially. The reason of this evil lies in the fact that, as diagnosed by minority Judges in Kihota Hollohon[673], The Speaker continuously depends on the majority support in the House. Therefore, if a member defects from smaller party to bigger party, and the speaker belongs to bigger party, an impartial adjudication on the defecting member’s disqualification becomes extremely improbable and the power vested with the Speaker is exercised keeping in view the political expediency.

Pandit Nehru referring to the office of Speaker said,

“The Speaker represents the House. He represents the dignity of the House, the freedom of the House and because the House represents the nation, in a particular way, the Speaker becomes the symbol of the nation’s freedom and liberty. Therefore, it is right that that should be an honored position, a free position and should be occupied always by men of outstanding ability and impartiality.674.”

Erskine says: “The Chief characteristics attaching to the office of Speaker in the House of Commons are authority and impartiality.675”

The above expectations seem to be based upon Constitutional expediency but not on political ones since in majority cases the decisions are found not touching the very spirit of the Constitution. Therefore, it is appeared not to be wrong to say that the Anti-Defection Law has stirred up more controversies than it has been able to solve.

In Mizoram, in September, 1988, a group of members walked out of the ruling party. The group claimed its membership as nine, but the Speaker after verifying found that one member who had gone abroad had not really defected. Thus, the strength of the break away group at eight fell short of the 1/3rd strength of the party in

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673 Kihota Hollohon V. Zachilhu, AIR 1993 Sc 412 (1).
674 See LSD. Deb. Vol. IX (1954), CC 3447-48
question, and, therefore, the Speaker characterized it as ‘defection’ and not a ‘split’. Pending a final decision on their disqualification, the Speaker suspended all the eight members from participating in the proceedings of the House. As a consequence, the Governor dismissed the Ministry. President’s rule was proclaimed in the State and the Assembly was dissolved.

In Nagaland, 13 members from the ruling party broke away and merged with the opposition in 1988. The Speaker recognized the split under the Anti-Defection Law. But the Governor refused to consider formation of the alternative government and recommended President’s rule and dissolution of the Assembly which was dissolved, when later the matter came before the High Court, it criticized the stand taken by the Governor.

Defections have been endemic in Goa so much so that Speaker Barossa himself led a group of seven legislators going out of the ruling party so as to himself become the Chief Minister of the State. Since the Speaker himself had defected, the question of disqualification of the defectors could not be disposed of immediately. The succeeding Speaker voluntarily decided not to adjudicate upon the question of disqualification.

On Dec. 13, 1990, the Speaker of the Goa Legislative Assembly held two members disqualified on the ground of defection. In Ravi S. Naik vs Union of India676 ‘the Supreme Court upheld the validity of the Speaker’s decision. But, in the same case, another order of the Speaker in which he had refused to recognize a split in a party and thus disqualified a member on the ground of defection was quashed by the Court.

In State of Meghalaya, Speaker suspended the voting rights of five independent members before the House was due to take up no confidence motion against the government Later the Speaker disqualified five members of the opposition and even ignored the stay order which these members had obtained from the Supreme Court The Supreme Court asked the State Governor to include the disqualified members in the trial of strength in the House. The stage was thus set for a confrontation between the Court and the Legislature. The situation was however

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676 AIR 1994 SC 1558: 1994 (Supp) 2 SCC 641
saved by the imposition of the President’s rule in the State and the dissolution of the State Legislature.\textsuperscript{677}

In the light of the following facts, a sorry state of affairs in Goa may be seen. Mr. Naik assumed office of the Chief Minister of Goa on 25-1-91 On 15-2-91, Speaker Sir sat disqualified Naik from the membership of the House on the ground of defection On 4-3-91, Sir sat was removed from Speakership and the Deputy Speaker functioned as Speaker reviewing the order earlier made by Sir sat set aside the order. In the instant case, the Supreme Court quashed the order made by the Deputy Speaker on the ground that there was no inherent power of review vested in the Speaker.

In Nagaland, the ruling party (Congress) had strength of 36 members in House of 60 members. 12 members defected and claimed a split, their strength being 1/3rd of the strength of the ruling party. The ruling party expelled two members from the party; the number of defectors from the party came down to 10 which was being less than 1/3rd of the party strength, the Speaker disqualified all the 10 members holding it as a case of defection and not of split.

The Governor asked the Speaker to reconsider his decision. He refused; the Governor dismissed the Ministry and installed the leader of the opposition in the office of the Chief Minister. In his turn, the Governor himself was dismissed from office by the Central government.

There arose a very bad case of confrontation between the Supreme Court and the Speaker of the Manipur Assembly. The Speaker disqualified several MLAs’ under the Anti-Defection Law. On the petition of one of the aggrieved MLAs, the Supreme Court invalidated the Speaker’s order. The Speaker refused to obey the Court order arguing that he was immune from the Court process being the Speaker. Ultimately, contempt of Court proceedings were initiated against him. The Court sent him notice to appear before it, but he refused to appear before the Court. After several adjournments, at last, on February 5, 1993, the Court directed the Central Government to produce the Speaker before it even by using minimum force against him, if

\textsuperscript{677}\textsuperscript{(1991)}
\textsuperscript{678}\textsuperscript{Dr. Kashinath G. Jhalmi V. The Speaker Goa Legislative Assembly, AIR 1993 SC 1558: 1994 (Supp) SCC 641. Dinesh Kumar v. Motilal Nehru Medical College, Allahabad, AIR 1990 SC 2031, the Supreme Court held that the Governments of Bihar and Uttar Pradesh had committed its contempt for not complying with its directions. The Court imposed exemplary costs against the State Governments. See also, in re Lily, Thomas, AIR 1964 SC 855: 1964 (6)-SCR 229}
necessary. The Court held as “totally misconceived” the contention of the Speaker that he was immune from the Court process. The Court said that It is unfortunate that a person who holds the constitutional office of a Speaker of Legislative Assembly has chosen to ignore the constitutional mandate that this country is governed by the rule of law and what the law is, is for this Court to declare in discharge of its constitutional obligation which binds all in accordance with Article 141 of the Constitution and Article 144 then says that all authorities are to act in aid of the orders made by this Court. The contemner has chosen to ignore the obvious corollary of rule of law.

A bizarre unconstitutional political equation in U.P. - though not declared unconstitutional by the Supreme Court- left live for five years. In the year of 2002, there was a scene of Hung Assembly no party could get a clear majority. President’s rule was imposed in Uttar Pradesh. On 3rd May, BSP leader Ms. Mayawati formed government with the support of the BJP. On 25th Aug. 2003, Ms. Mayawati resigned. In the same Month on 29th Aug., Mulayam Singh Yadav, with the help of 38 break away BSP MLAs and the Rashtrya Lok Dal, formed government. The congress extended outside support. On 6th Sept. Assembly Speaker K.N.Tripathi recognized the split in the BSP and gave approval to the formation of the Loktántrik Bahujan Dal. Later, the party merges with the Samajwadi Party. The B.S.P. challenged the validity of the Speaker’s order in the Allahabad High Court. The High Court quashed Speaker’s orders of 6th September and 8 September but remitted the matter back to. The Speaker first to decide the application of the 13 MLA’s and afterwards starts hearing of the matter of 24 MLAs. The BSP leader Swami Prasad Maugrya filed an appeal in the Supreme Court against the decision of the High Court. He contended that the High Court was not right in referring the case to the Speaker. It could have decided the disqualification of MLAs itself. A five judge Constitution bench headed by Chief Justice K.G. Balakrishnan held that the meeting of the 13 MLAs of the breakaway BSP group with the UP governor on August 27, 2003 in support of the SP, amounted to defection as defined under the Tenth Schedule of the Constitution.

The bench agreed with the majority verdict delivered by Justice Jagdish Bhalia and Justice Pradeep Kant of the Allahabad High Court, which had quashed the UP Speaker’s decision to recognize the split. The court concluded: “It is necessary not

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679 See on the point, M.L Sachde V. Union of India, AIR 1991 Sc 311 in this case, the Government of India was held guilty of cc of court for its failure to comply with a mandatory direction issued by the Supreme court and In
only to show that 37 MLAs had separated but it is also necessary to show that there was a split in the original political party. The 13 MLAs, therefore, stand disqualified with effect from 27.8.2003.

(ii) **Voluntarily giving up membership of party**

In terms of provision of para 2(1)(a) of the Tenth Schedule, a member becomes liable to be disqualified from the membership of the Legislature to which he belongs, in the event of his voluntarily giving up the membership of his original political Party.

In Rajya Sabha, only four petitions for disqualification have so far been filed, seeking members’ disqualification under para 2(1)(a) of the Tenth Schedule. These petitions were allowed and consequently the said four members viz. Sarvashri Mufti Mohamad Sayeed, Satya Pal Malik, Jainarian Prasad and Isam Singh were disqualified from the membership of Rajya Sabha.

In Lok Sabha, of the 58 petitions for disqualification filed so far, in 27 petitions, disqualification of members was sought under para 2(1)(a) of the Tenth Schedule whereas in 31 petitions, disqualification of members was sought under para 2(1)(b) of the Tenth Schedule. In two cases namely, Janata Dal (S) (Lok Sabha) and Janata Dal (Tenth Lok Sabha), petitions for disqualification of members were filed both under paras 2(1)(a) and 2(1)(b) of the Tenth Schedule. In Janata Dal (A) case (Tenth Lok Sabha), the petitioner, Shri Ajit Singh in his composite petition for disqualification, sought disqualification of six out of seven respondents under para 2(1)(b) and in his alternative plea sought disqualification of all the seven respondents under para 2(1)(a). It may thus be seen that in Lok Sabha disqualification of members was sought more under para 2(1)(a) rather than para 2(1)(b).

Incidentally, in the first ever petition for disqualification under the Tenth Schedule in the Lok Sabha, given by Shri K.P. Unnikrishnan during the Eighth Lok Sabha in 1987, disqualification of respondents was sought under para 2(1)(a) of the Tenth Schedule. This petition was, however, dismissed by the Speaker, Dr. Bal Ram Jakhar.

The first case in the Lok Sabha where a member was disqualified from the membership of the Lok Sabha, was on the ground of his voluntarily giving up the membership of his original political party. In 1987, (Eighth Lok Sabha), a petition

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680 Srî Rajendra Singh Rana & Ors V. Swami Prasad Maurya & Ors AIR 2007 sc 1305, 2007 (2) ALT 65 (SC), [ (2; OR 315 (SC)]
was given by a member, Shri Ram Pyare Panika against another member, Shri Lalduhoma for having given up the membership of his original political party viz., Indian National Congress. The main allegations against Shri Lalduhoma were that he had formed a new party viz. Mizoram Congress for Peace (which later on amalgamated with the Mizoram National Union Party) and contested the elections to the Mizoram Legislative Assembly in 1987, as an independent candidate set up by the Mizoram National Union Party against the official candidate of Indian National Congress. It was contended that the respondent’s acts and conduct implied that he had voluntarily given up membership of the Indian National Congress. The respondent, however, took a plea that he had never resigned from the party and even after his expulsion from the party he had been paying subscription for the membership of the party. The Committee of Privileges (Eighth Lok Sabha) to which the matter was referred for preliminary inquiry by the Speaker had the occasion to consider the implication of the term ‘voluntarily giving up membership’.

In this context, the Committee of Privileges observed:-

“The Committee have also considered as to what amounts to voluntarily giving up of membership of a political party by a member. The Committee notes that the words used in paragraph 2(1)(a) of the Tenth Schedule are: ‘If he has voluntarily given up his membership of such political party’ and not ‘if he has voluntarily resigned from such political party’. The Committee feel that the use of words ‘voluntarily given up’ is very significant To insist that a letter of resignation to the competent authority, voluntarily tendered would alone disqualify would be placing too narrow an interpretation on the constitutional provision and would in fact negate the very objective which Parliament had in mind while enacting the Constitution (Fifty-second Amendment) Act and that such an interpretation would lead to gross circumvention of the provisions of the Tenth Schedule.

The Committee are convinced that it was with a view to obviating such situations that the words ‘voluntarily given up’ were used in paragraph 2(1)(a). As the law does not define the precise manner in which the membership is to be given up, the words have to be interpreted according to the spirit in which they have been used in the Act. The intention of the law-makers is quite clear: that it is not only by the overt act of tendering his resignation but also by his conduct that a member may give up the membership of his political party. The Committee are of the view that if a member by
his conduct makes it manifestly clear that he is not bound by the party discipline and is prepared even to wreck it by his conduct, he should be prepared to pay the price of losing his seat and seeking re-election.”

in yet another case during the Eighth Lok Sabha, a petition for disqualification was filed by a member, Shri Mohammed Mahfooz All Khan, in 1988, against another member, Shri Hardwari Lal on the ground that the latter had voluntarily given up the membership of the political party (Lok Dal) to which he belonged. This petition too was referred by the Speaker to the Committee of Privileges for preliminary enquiry. While the matter was still under the consideration of the Committee of Privileges, it lapsed on the dissolution of the Eighth Lok Sabha on 27 November 1989.

Though the matter lapsed, it would not be out of place to mention briefly the novel plea taken by Shri Hardwari Lal in his written arguments before the Committee which would have entailed a fresh look at the interpretation of the words “voluntarily giving up” the membership of a political party. Shri Hardwari Lal contended that although ‘voluntary’ resignation from the membership of the original political party would not entail disqualification of a member if the other provisions of para 3 apply in his case, his separation from Lok Dat(B) was not ‘voluntary’ in the ordinary sense of the word, as he had to part company with the party under compulsive circumstances. Hence, the question for consideration was whether parting company under “compulsive circumstances” would or would not amount to quitting a political party ‘voluntarily’.

In State Legislatives Assemblies, in more than 100 petitions were given under para 2(1)(a) of the Tenth Schedule. The maximum number of petitions under para 2(1)(a) of the Tenth Schedule have been in the State of Haryana.

The matter regarding interpretation of the term ‘voluntarily giving up membership’ has been engaging the attention of the Presiding Officers as well as the judiciary too.

In this context, the case of Sanjay Bandekar and Ratnakar Chopekar in Goa Legislative Assembly is very pertinent. In 1991, on separate petitions being given against Sarvashri Ravi S. Naik, Sanjay Bandekar and Ratnakar Chopekar, the Speaker, Goa Legislative Assembly declared all the three members as disqualified from the membership of Goa Legislative Assembly on ground of their voluntarily giving up membership of their original political party in terms of para 2(1)(a) of the Tenth Schedule. In this case, there was no resignation but the members had
accompanied an Opposition leader for meeting the Governor, and as such, their act
was termed as giving up the membership of their party. The writ petitions filed by the
members against the orders of the Speaker were dismissed by the High Court of
Bombay. The member then moved the Supreme Court.

The Supreme Court in their judgment inter alia observe4as follows:- The
words ‘voluntarily given up his membership’ are not synonymous with ‘resignation’
and have a wider connotation. A person may voluntarily give up his membership of a
political even though he has not tendered his resignation from the membership of that
party. Even in the absence of a formal resignation from membership an inference can
be drawn from the conduct of a member that he has voluntarily given up his
membership of the political party to which he belongs.

The Supreme Court relied on the copies of newspapers which carried the
photographs of those two members when they were going with the Opposition leader
to meet the Governor. One meeting with the Governor in the company of Opposition
or other parties’ MLAs was treated to be sufficient evidence as having given up the
membership of the party and, therefore, they were disqualified.

In yet another case (G. Viswanathan vs. Speaker, Tamil Nadu Legislative
Assembly and Azhagu Thirunavakkarasu vs. Speaker, Tamil Nadu Legislative
Assembly), the Supreme Court in their judgment dated 25 January, 1996 (1996 2
SCC. 353) inter alia observed that “the act of voluntarily giving up the membership of
the political party may be either expressed or implied”.

During the Twelfth Lok Sabha, a petition was given by Shri K. Yerrannaidu,
MP and Leader of the Telugu Desam Party (TDP) in the Lok Sabha against Shri S.
Vijayarama Raju, MP on the ground of his having voluntarily given up the
membership of his original political party viz., Telugu Desam Party. Shri Yerrannaidu
in his petition contended that Shri Vijayarama Raju had publicly announced his
support for the Congress while continuing to remain in TDP. In support of his
contentions he enclosed with his petition relevant press clippings and copies of
statement issued by Shri Raju indicating his support for INC. Shri Yerrannaidu
contended that from the action, conduct and declaration of Shri Raju, the inference
was clear that he had voluntarily given up his membership of TDP, thereby attracting
provisions of para 2(1)(a) of the Tenth Schedule.

The petition however became infructuous with the dissolution of the Twelfth
Lok Sabha on 26 April 1999.
During the Thirteenth Lok Sabha, Shri Rupehand Pal, MP and Chief Whip of the CPI(M) in the Lok Sabha gave petition under the Tenth Schedule against Prof. R.R. Pramanik, MP for having voluntarily given up the membership of his original political party viz., CPI(M). The main contention of the petitioner was that the conduct, actions, contentions and statements of the respondent indicated that he had voluntarily given up the membership of his original political party viz. CPI(M). Placing reliance upon observations made by the Committee of Privileges (Eighth Lok Sabha) in Lalduhoma case and the Supreme Court’s judgment in Ravi Naik case, it was contended by the petitioner that if it could be established from a member’s conduct, overt or covert, that he no longer considered himself to be a member of the party or that he had abandoned the party, the same could be termed as his voluntarily giving up the membership of his political party entailing disqualifications under the provisions of para 2(1)(a) of the Tenth schedule.

The Speaker in exercise of his powers under para 7(4) of the Anti-defection Rules referred the petition to the Committee of Privileges (Thirteenth Lok Sabha) for preliminary enquiry and report While the petition was under consideration of the Committee of Privileges, the Thirteenth Lok Sabha was dissolved on 6 February 2004.

The Committee of Presiding Officers of Legislative Bodies in India in their Report on ‘Review of the Anti-defection Law’ presented at the 66th Conference of Presiding Officers of the Legislative Bodies in India held in Mumbai on 5 February, 2003, dwelt upon the term ‘voluntarily giving up membership’ in the light of observations made by the Supreme Court in Ravi Naik case and observed:

“The core term ‘defection’, has not been defined either in the Tenth Schedule or the Rules made there under. The Committee note that various ingenious methods of defections may be resorted to by members Some such instances which have come to the notice of the Committee were:-

(a) members openly working against the party interests, while being within the party;

(b) members joining the Council of Ministers of some other political formations;

and

681 Report was adopted by the Conference on the same day
(c) members speaking out against the policies of its original political party or voicing support to policies of another political party, without resigning from membership of their original political parties."

Viewing the situation in totality, the Committee, opined that the term ‘voluntarily giving up of membership’ be comprehensively defined in the Tenth Schedule, taking care of various connotations of the word.

(iii) **Violation of party whip/direction**

In terms of provisions of para 2(1)(b) of the Tenth Schedule, a member is liable to be disqualified if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining prior permission of such political party, person or authority and such voting or abstention has not been condoned of such political party, person or authority, within fifteen days from the date of such voting or abstention.

In Lok Sabha, as stated earlier, members’ disqualification was sought in 18 petitions under para 2(1)(b) of the Tenth Schedule. In the Janata Dal (A) case during the Tenth Lok Sabha, the petitioner sought disqualification of the respondents under para 2 (1)(a) as well as under para 2 (1)(b) of the Tenth Schedule. In Rajya Sabha there has not been any instance where a member’s disqualification was sought under para 2(1)(b) of the Tenth Schedule. In State Legislatures Assemblies, 25 petitions have been given under para 2(1)(b) of the Tenth Schedule. The maximum number of petitions under para 2(1)(b) have been in the State of Uttar Pradesh.

By and large there has not been any controversy or difference of opinion with regard to the provision under para 2(1)(b) of the Tenth Schedule. Nevertheless it would be of interest to note that the aspect of true import of the term ‘direction! whip’ as used in para 2(1) (b) of the Tenth Schedule was examined by Courts and other institutions. In 1987 when the Anti-defection Law was still in a nascent stage, in Prakash Singh Badal and Others. vs. Union of India and Others (AIR 1987 Punjab and Haryana 263), the question whether para 2(1)(b) of the Tenth Schedule to the Constitution was violative of the Constitution, came up for consideration. On the question whether para 2(1 ) (b) of the Tenth Schedule is violative of the provisions of article 105 of the Constitution, the High Court, as per their majority opinion held that:

So far as the right of a member under article 105 is concerned, it is not an absolute one and has been made subject to the provisions of the Constitution and the
rules and standing orders regulating the procedure of Parliament. The framers of the Constitution, therefore, never intended to confer any absolute right of freedom of speech on a member of the Parliament and the same can be regulated or curtailed by making any constitutional provisions, such as the Fifty-second Amendment. The provisions of Para 2(b) cannot, therefore, be termed as violative of the provisions of article 105 of the Constitution. It cannot be said that the provisions of para 2(b) would be destructive of the democratic set-up, the basic feature of our Constitution.

The Supreme Court had the occasion to dwell upon the aspect of the interpretation of provisions of para 2(1)(b) of the Tenth Schedule in the Kihota Hollohan Vs. Zachilhu & Others. The Supreme Court in this case held that the words “any direction” in para 2(1)(b) require to be construed harmoniously with other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. The Court further held that for this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(1)(b) would have to be limited to a vote on motion of Confidence or No Confidence in the Government or, where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate.

Way back in 1990 (even before the Supreme Court’s judgment in Kihota Hollohan’s case), the Committee on Electoral Reforms under the Chairmanship of the then Union Law Minister, Shri Dinesh Goswami submitted a report on ‘Electoral Reforms’ on 4 May 1990, wherein the Committee recommended that disqualification provisions should be made specifically limited to cases of (a) voluntarily giving up by an elected member of his membership of the political party to which the member belongs; and (b) voting or abstention from voting by a member contrary to his party direction or whip only in respect of a motion for Vote of Confidence or a motion amounting to No-confidence or Money Bill or motion on Vote of Thanks to the President’s Address and that the Deputy Speaker of the House of the People or the Legislative Assembly of a State, the Deputy Chairman of Council of States or Legislative Council of a State or a person occupying the Chair for the time being in the absence of any elected Presiding Officer, as the case may be, should not incur

682 AIR 1993, SC 412
disqualification if he chooses to abstain from voting contrary to his party direction or whip.

The Law Commission of India under the Chairmanship of Justice B.P. Jeevan Reddy, in their 170th Report on ‘Reform of the Electoral Laws’ submitted to the I Government of India in May, 1999, dwelt on the aspect of desirability of issuing the whip in specific situations only and observed: So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgment of each political party. In such a situation, we can only point out the desirability aspect and nothing more. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the Government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech an expression of the members.

(iv) Splits and mergers

The main ground of criticism regarding splits (which has since been omitted from the Tenth Schedule and mergers is that while individual defection is punished, collective defection in terms of splits and mergers was allowed.

Since the coming into force of the Tenth Schedule, there have been 10 claims for of splits and 14 for mergers in Rajya Sabha. In Lok Sabha, there have been as many as 22 claims of splits and 13 of mergers. As regards splits, maximum number of claims for splits i.e. 10 have been made during the Thirteenth Lok Sabha, which is followed by five during the Tenth Lok Sabha, whereas maximum number of six claims for mergers were made during the Tenth Lok Sabha, followed by five during the Thirteenth Lok Sabha. In the Tenth Lok Sabha, of the five claims for splits, in two cases after effecting splits, the split away groups merged with another legislature party. In the Tenth and Thirteenth Lok Sabhas, a single party was split more than once. In the Tenth Lok S Janata Dal was split twice. In the Thirteenth Lok Sabha, Janata Dal (United) split thrice. In another case, Rashtriya Janata Dal (Democratic) which came into being as a consequence of the split in the RJD, underwent two more splits.

In State Legislatures, there have been 75 claims for splits and more then 100 claims for mergers.
One of the most perceived misuses of the provisions of splits and mergers pertains to engineering of splits to facilitate mergers. Experience has shown that in large parties, it is very difficult to garner support of two-thirds of the members required for a merger. The splinter groups, therefore, often resorted to the tactics of first engineering a split in the legislature party on the strength of only one-third of its members. Later on, they merged the splinter group en bloc with another party. Thus, in net effect, a merger took place on the strength of merely one-third of the members of a legislature party.

Several institutions such as Committee of Presiding Officers of Legislative Bodies in India to review the Anti-defection Law, the Law Commission of India and the National Commission to Review the Working of the Constitution, in their respective Reports considered the lacunae with regard to splits and mergers. By and large the view had been to do away with the provisions of splits and mergers from the Tenth Schedule.

In State Legislatures, in a number of decisions involving splits various interesting facts have come up regarding interpretation of provisions relating thereto. In the case of Thangminten Kipgen in Manipur Legislative Assembly, the question as to who can lawfully claim a split within the ambit of para 3 of the Tenth Schedule came up. On this, the Speaker observed that the Legislature Party of a political party is formed by the elected member(s) of that political party. A split can be claimed under para 3 of the Tenth Schedule only by such member(s) of the House belonging to a political party. A member of the House as referred to under various provisions of the Tenth Schedule would mean and be construed to be a member who had already become a member of the House after subscribing the oath or affirmation in the form set out for the purpose. Thus, an elected member cannot become a member of the House before taking such oath.

Another point that was raised in the above case was whether the outgoing Speaker of a dissolved Assembly, who was also defeated in the election to the next Assembly, could accord recognition to a split claimed by the elected members of the new Assembly. Incidentally, notification for constitution of the Seventh Manipur Legislative Assembly and dissolution of the Sixth Assembly were issued on 1 March 2000. On 4 March 2000, the respondent, Shri Thangminten Kipgen claimed a split in the Nationalist Congress Party (NCP). Interestingly, the intimation regarding the above split was forwarded to the Speaker of the outgoing Sixth Assembly who took
cognizance of the split vide his order dated 6 March 2000. Later, when the conference of the outgoing Speaker in deciding the petition was challenged vide disqualification petition dated 19 June 2000, the Speaker of the Seventh Assembly responded to this point in negative. He opined that the outgoing Speaker had no legislative or parliamentary authority under the Constitution of India in respect of the new House. He further added that since the outgoing Speaker had ceased to be the authority, he had no jurisdiction or competence to accord recognition to the split claimed by the members of the new House.

In the Ngullie and Chubatemjen Case (1998) in Nagaland, 12 MLAs including two unattached MLAs claimed a split in the Indian National Congress and requested the Speaker to recognize the breakaway group, i.e. Congress (Regional). The Speaker, however, disallowed the split stating that since the breakaway Group, excluding two expelled members, did not command strength of one-third members of the original party, the split was invalid. Accordingly, he disqualified the ten members who had claimed split. Later, however, the disqualified members submitted representations pointing out that the Speaker had erroneously issued their disqualification orders which needed to be revoked. The Speaker, after examination of the representations revoked the orders, stating that the orders treating the two members, Shri T.A. Ngullie and Shri Chubatemjen, as unattached members and disqualifying the ten remaining members were invalid ab initio as the communication regarding split in the Congress (I) Party was received earlier than the letters of expulsion of the two members. Besides, the procedure for disqualify the ten members, as laid down in Rule 7(3) (a)&(b) of the Members of Nagaland Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, which are mandatory, was not followed.

The Constitution (Ninety-first Amendment) Act, 2003, which has omitted the provisions regarding split from the Tenth Schedule, has effectively put an end to the unhealthy practice of engineering split for facilitating backdoor merger with another party on the strength of one-third members of a legislature party instead of the required two-third members. Consequently, now it is not that easy to garner support of two-third members as required under the provisions of para 4 of the Tenth Schedule.

(v) Expulsions and status of unattached members

Before coming into force of the Constitution (Fifty-second Amendment) Act, 1985, and the rules framed thereunder, it was an established practice in Lok Sabha that if a member of a political party was expelled from his party, he was treated as
unattached in the House. The Constitution (Fifty-second Amendment) Act, 1985, and the rules framed there under do not make provision for a situation arising out of a member’s expulsion from his political party for his activities outside the House. The Act and the rules do not stipulate the existence of an unattached member. The question whether the Speaker is empowered to declare a member who has been expelled from his party as unattached came up for determination during the Eighth Lok Sabha in Shri K.P. Unnikrishnan, MP’s case. Shri K.P. Unnikrishnan, MP who had been declared unattached by the Speaker (Dr. Bal Ram Jakhar), consequent upon his expulsion from Congress (S), questioned the Speaker’s authority to declare members elected on a party ticket/symbol as unattached. On Shri Unnikrishnan’s request, the opinion of the Attorney-General for India was obtained on the point, who opined that neither the Tenth Schedule to the Constitution nor the rules framed there under provide for the existence of an unattached member. However, the Speaker has to see whether the provisions of directions 120 & 121 of the Directions by the Speaker are attracted in such cases, and if not, Speaker may treat them as unattached. A similar approach was adopted during the Ninth Lok Sabha when the Speaker (Shri Rabi Ray) declared 25 members expelled from the Janata Dal, as unattached.

During the Tenth Lok Sabha, however, the Speaker (Shri Shivraj V. Patil) in his decision in the Janata Dal case adopted a different approach and observed: In the past, in some cases, when the Members were expelled, they were called unattached, to distinguish them from the party Members as well as from the independent Members. The word ‘Unattached’ is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament.

In this context it would be pertinent to note the following observations made by the Supreme Court of India in G. Viswanathan Vs. Speaker, Tamil Nadu Legislative Assembly and Azhagu Thirunavukkarasu Vs. Speaker, Tamil Nadu Legislative Assembly Cases:-

Even if (such) a member is thrown out or expelled from the party, for the purposes of Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as unattached.

683 1996 2 SCC 353
The consequences of expulsions are fraught with many difficult situations for the expelled member. For instance, a member may be expelled from the political party for various reasons other than voting against party directive in the House or for joining any other party. As long as there are provisions in the constitutions of political parties regarding expulsions etc., members would continue to be expelled from their parties for anti-party activities. Such expulsions do not entail disqualification but create a category of members which does not fit in the scheme of the Tenth Schedule. The present position vis-à-vis members is that while in some Legislatures such members are treated as unattached, in others, including in Lok Sabha, such member continue to belong to the same party even after expulsion and are bound by its whips etc.

However, the inability of an expelled member in finding adequate time for participating in debates of the House and in being nominated to the Committees, consequent upon his expulsion, tend to deprive his constituents of their right of being represented properly in the House. An expulsion of a member from his political party in a way affects the member’s constituents whom he represents in the Legislature. It was in this context that the Committee of Presiding Officers of Legislative Bodies in India on the need to review the Anti-defection Law under the Chairmanship of Shri Hashim Abdul Halim, Speaker, West Bengal Legislative Assembly, in their Report presented to the 66th Conference of Presiding Officers at Mumbai on 5 February 2003 had inter alia recommended the Government to bring forward a constitutional amendment to amend the Tenth Schedule envisaging that while an expelled member should not be subject to victimization by the political party which expelled him, at the same time, certain fetters should be imposed upon him such as - prohibition on his joining any legislature party in the House/Political party outside the House; or holding any ministerial position or any other office in the Government etc. It had further recommended that consequences of expulsions from the political party should, therefore, be clearly laid down in the Tenth Schedule, so as to define the status, rights and obligations of expelled members in the House. The Constitution (Ninty-First Amendment) Act, 2003 however, did not address this aspect.

(vi) **Interpretation of the term 'political party'**

Another issue that has frequently come up for deliberations is about interpretation of the term ‘political party’ for deciding matters concerning defections.
In Assam, the Speaker, while delivering decision in the case of Santi Ranjan Dasgupta and Others (1998), observed that as stipulated in the Election Symbols (Reservation and Allotment) Order, 1968, a political party for the purpose of defection is the one, which is recognized by the Election Commission of India and therefore recognized for the purpose of election. In the case of the respondents, however, it was clear that their Group was not a political party having powers to merge with another party. It could, therefore, not be claimed that a political party [the United Minorities Front (Santi Ranjan Dasgupta)] had merged with another political party (i.e. the Indian National Congress). The Speaker, therefore, held that the respondents incurred disqualification in terms of para 2(1)(a) of the Tenth Schedule to the Constitution. Accordingly, he allowed the petition and disqualified the respondents from the membership of the Assembly. Similarly, in another case, the Speaker disallowed a petition against Shri Sahidul Alam Chaudhury and 14 other MLAs for having joined Asom Gana Parishad (AGP) Legislature Party. The Speaker in this case held that since the AGP was not a political party at the time of its joining by the respondents, provisions of para 2(2) of the Tenth Schedule did not apply in that case.

10. **Efforts made for removal of lacunae in the Law**

The shortcomings in the law as enumerated above resulted in varied interpretation of its provisions by the Presiding Officers. Several decisions of the Presiding Officers under the Tenth Schedule were challenged in Courts. Provisions of the Tenth Schedule were also challenged in various High Courts of the country as being illegal and unconstitutional. A need for removing lacunae and shortcomings of the law was, therefore, felt almost immediately after it came into force.

(i) **Committee on Electoral Reforms**[^684]

The first suggestion in this direction came from the Committee on Electoral Reforms under the Chairmanship of Shri Dinesh Goswami, the then Union Law Minister which in its Report submitted on 4 May, 1990 recommended certain changes in the Anti-defection Law.

In the meanwhile, all the petitions challenging the validity of the Tenth Schedule as also decisions of various Presiding Officers were transferred by the Court.

[^684]: Dinesh Goswami Committee on electoral performs, 1990.
of India to themselves on the request of the Government of India as important questions of law and Constitution were involved.

(ii) **Kihota Hollohon vs. Zachilhu**

The Supreme Court of India in their judgment in the Kihota Hollohon vs. Zachilhu and others delivered on 12 November 1991, (in their majority opinion) upheld the legality and constitutionality of all the other provisions of the Tenth Schedule except paragraph 7 which provides that no Court shall have any jurisdiction in respect of any matter connected with disqualification of a member of House under the Tenth Schedule. The Court held that paragraph 7 is ultra vires of the Constitution. The Court in their judgement also inter-alia held that:

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

(ii) The deeming provision in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh’s case to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words “be deemed to be proceedings in Parliament” or “proceedings in the Legislature of a State” confines the scope of the fiction accordingly.

(iii) **Emergent All India Presiding Officers’ Conference**

As the observation of the Supreme Court in Kihota Hollohan’s case, that the decisions of the Presiding Officers under the Tenth Schedule were subject to judicial review, could lead to a situation of confrontation between the judiciary and the legislature, the matter was discussed in various legislative fora such as Meeting of Standing Committee of All India Presiding Officers’ Conference held on 20 January 1992, Meeting of Speaker, Tenth Lok Sabha with Leaders of Parties/Groups in the Lok Sabha held on 5 February 1992, Meeting of the Standing Committee of All India Presiding Officers’ Conference held on 10 February 1992, Emergent All India Presiding Officers’ Conference held on 11 February 1992 at New Delhi, and the All India Presiding Officers’ Conference held in Gandhinagar on 29 and 30 May, 1992.

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685 AIR 1993 SC 412.
686 1965(1) SCR 413
While several other suggestions were made at these meetings, it was unanimously agreed by the Presiding Officers that in matters relating to Anti defection Law before Courts, they would furnish the records, if called for and respect the decisions of the Courts. They would, however, not subject themselves to the jurisdiction of the Courts. Suggestion have also been made from time to time by various bodies/institutions for amendments in the Anti-defection Law to make it more effective.

(iv) **Halim Committee**

A Committee of Presiding Officers under the Chairmanship of Shri Hashim Abdul Halim, Speaker, West Bengal Legislative Assembly, constituted in pursuance of a decision taken at the Conference of the Presiding Officers held on 25 and 26 June 1993, in Madras, submitted a Report on ‘Measures to Promote Harmonious Relations between the Legislatures and Judiciary’ in January 1994. The Report inter-alia, contained recommendations/observations in respect of matters involving decisions given by Presiding Officers of Legislatures under the Anti-defection Law.

The Committee explored the possibility of entrusting the power to decide cases under the Law to a judicial body without involving the Chairman/ Speaker of the House but opined that “although such an arrangement may have several obvious advantages, it may create new areas of conflict”. The Committee, thereafter, made several alternative suggestions as under with regard to the deciding authority under the Anti-defection Law:

(i) The concerned Chairman/ Speaker may decide the case and an appeal against such decision may lie in the Supreme Court of India, if the case relates to either House of the Parliament; or the concerned High Court, if the case relates to a State Legislative Council/Assembly. In such a case, the Chairman/ Speaker, who acts as a judicial authority while deciding a case under the Anti-defection Law, should not be a necessary party to such proceedings and appropriate laws should be drafted/amended to provide for appeals to be filed against such decisions in the nature of an appeal from a judgement by a court of law.

(ii) The concerned Chairman/ Speaker may decide the case and an appeal against such decision may lie jointly with the President and Vice- President of India, if

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687 Halim Committee on Anti-defection Law, Report, 1998.
the case relates to the Rajya Sabha, or the President of India, the Vice-President of India and the Speaker, Lok Sabha, if the case relates to Lok Sabha; or the Governor of the State or Chairman of the Legislative Council, if the case relates to the Legislative Council of a State; or the Governor of the State or the Speaker of the Assembly, if the case relates to the Legislative Assembly of a State.

(iii) The case may be decided by a Committee of senior members of the House and an appeal against the decision may lie with the concerned Chairman/Speaker of the House.

(iv) Any other procedure which may be agreed upon by the three organs of the State, namely, the Legislature, the Executive and the Judiciary.

The Institutions such as the Law Commission of India, the Election Commission of India and the Presiding Officers of Legislative Bodies in India have also expressed their concern in this regard and have made suggestions for amendments to the Anti-defection Law.

(v) Law Commission of India


The gist of the amendments proposed by the Law Commission of India in their 170th Report has been given as under:

- Provisions regarding splits and mergers be deleted from the Tenth Schedule.
- Whips may be issued only when the voting in the House affects the continuance of the Government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members.
- The term political party may be defined as under: Political party in relation to a member of a House, means the political party on whose ticket that member was elected and where such political party is a part of a front or a coalition formed before a general election for contesting such election, such front or coalition, provided that the Election Commission is informed in writing by all

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Law Commission of India, One hundred seventeenth Report on "Reform of the Electoral Laws" May 199, pp 84-89
the constituent parties in the front/coalition before the commencement of the poll that such a front/coalition has been formed.

(vi) National Commission to Review the Working of the Constitution

The National Commission to Review the Working of the Constitution under the Chairmanship of Justice M.N. Venkatachaliah in their report submitted to the Government of India in March 2002 had also made some recommendations for amendments to the Anti-defection Law, a gist of which is as under:

- Provisions be made in the Tenth Schedule providing that all persons defecting must resign from their Parliamentary or Assembly seats and seek fresh mandate. Provisions regarding split may be scrapped from the Tenth Schedule to the Constitution.
- Defector be debarred from holding any public office of a Minister or any other remunerative political post at least for the duration of reaming term of existing Legislature or until fresh elections are held.
- Vote cast by a defector to topple a Government be treated as invalid.
- Power to decide questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

On 22 September 1998, during the 62nd Conference of the Presiding Officers’ of Legislative Bodies in India, the Presiding Officers deliberated on the ‘Need to review the Tenth Schedule to the Constitution’.

In view of the near unanimity among the Presiding Officers that the Anti-defection Law needed to be reviewed, Shri G.M.C. Balayogi, the then Speaker, 11th Lok Sabha and Chairman of the Conference of Presiding Officers, on 13 October 1998, constituted a Committee of Presiding Officers of Legislative Bodies under the Chairmanship of Shri Hashim Abdul Halim, Speaker, West Bengal Legislative Assembly to examine the matter.

(vii) 66th Conference of Presiding Officers of the Legislative Bodies

The Report of the Committee was presented at the 66th Conference of Presiding Officers of the Legislative Bodies in India held in Mumbai on 5 February 2003 and was adopted by the Conference on the same day.

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689 National Commission to Review the working of the constitution reports, 2002.
The Committee in their Report entitled ‘A Review of Anti-defection Law’ recommended that the Government of India may bring forward a constitutional amendment to amend the Tenth Schedule to the Constitution of India on the following lines:

(i) Provisions regarding splits and mergers be deleted from the Tenth Schedule.

(ii) The term ‘voluntarily giving up of membership’ should be comprehensively defined in the Tenth Schedule.

(iii) Consequences of expulsions from the political party should be clearly laid down in the Tenth Schedule so as to clearly define the status, rights and obligations of expelled members.

(iv) An expelled member should not be victimized by the political party which expelled him. At the same time, to prevent an expelled member from taking undue advantage of his situation, certain fetters should be imposed upon him such as prohibition on his joining any legislature party in the House/Political Party outside the House or holding any ministership or any other office in the Government etc.

(v) The term “Political Party” may be defined in the Tenth Schedule on the lines of definition proposed by the Law Commission of India in their 170th Report in consultation with the Election Commission of India.

(vi) Nominated members should be treated at par with independent members.

(vii) Deciding au in case of members of the House of Parliament may be the Election Commission and the Supreme Court may be made the appellate authority. In case of the State Legislatures, deciding authority may be the respective State Election Commission and the High Court of the State concerned may be the appellate authority.

(viii) A time frame may be laid down for decisions by Election Commission in Anti-defection cases.

Some of the Presiding Officers subsequently expressed reservations on Committee’s recommendation about vesting the authority to decide cases under the Tenth Schedule in the Election Commission of India or the respective State Election Commissions. It was, therefore, decided to deliberate upon the issue at the next Conference of Presiding Officers.
(viii) **67th Presiding Officers Conference**

The matter was discussed at the 67th Presiding Officers Conference held in Kolkatta on 10 October 2004. After some deliberation, the Conference decided not to make any changes in the Report of the Committee adopted in Mumbai.

(ix) **Constitution (Ninety-first Amendment), Act 2003**

The Government introduced in the Lok Sabha, on 5 May 2003 the Constitution (Ninety-seventh Amendment) Bill, 2003. The Bill was referred to the Departmentally Related Standing Committee (DRSC) on Home Affairs for examination and report. The Report of the Standing Committee was laid on the Table of the House on 5 December, 2003.

The then Minister of Law and Justice Shri Arun Jaitley moved the motion for consideration of the Constitution (Ninety-seventh Amendment) Bill, 2003 on 16 December 2003 in the Lok Sabha. He also moved amendments incorporating certain recommendations made in the Report of the Standing Committee. The amendments were adopted and the Bill as amended was passed by the Lok Sabha the same day. The Rajya Sabha passed the Bill on 18 December 2003. It was assented to as the Constitution (Ninety-first Amendment Act, 2003) by the President on 1 January 2004 and was notified in the Gazette of India on 2 January 2004.

**Salient features of the Constitution (Ninety-first Amendment) Act, 2003**

The Act omitted paragraph 3 dealing with split provisions from the Tenth Schedule to the Constitution and made consequential changes in paragraphs 1 and 2.

The Act also inserted a new clause 1 B in articles 75 and 164 providing that a member belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament/State Legislature before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

Depriving a defector from holding any ‘remunerative political pos’ as defined in the Act, the new article 361 B, inserted after article 361A, provides that a member of a House belonging to any political party who is disqualified for being a member of

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690 Introduced in the Lok Sabha on 5 May 2003 as the Constitution (Ninety-seventh Amendment Bill) Bill 2003
the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Besides the above-mentioned provisions relating to the Tenth Schedule, the Act also contained provisions regarding restricting the size of the Council of Ministers in the Union and State Governments.

B. Suggestions

In view of above study the present researcher humbly submits the following suggestions:

1. Power to decide questions as to disqualification

The power to decide questions as to disqualification on ground of defection under Tenth Schedule of the Constitution of India should be vest in Election Commission instead of in the Chairman or Speaker of the house concerned.\(^{691}\)

\(^{691}\) Recommendation of various Commissions, Committees, Persons i.e.

II. Election Commission of India, Report, 2004, part II chapter 1, p.19."All questions of post-election disqualification of a sitting member of Parliament or of a State Legislature are decided by the President or, as the case may be, the Governor of the State concerned, on the opinion of the Election Commission, except the question of his disqualification under the provisions of the Tenth Schedule to the Constitution of India. The latter question alone is referred to, and decided by, the Speaker/Chairman of the House concerned [Articles 103 and 192 of the Constitution]. All political parties are aware of some of the decisions of the Hon'ble Speakers, leading to controversies and further litigations in courts of law. Some suggestions have been made in certain quarters, even by a former Speaker of Lok Sabha, that the questions of disqualification of members on the ground of defection should also be decided by the President and Governors, on the opinion of the Election Commission of India, which is now a three-member Constitutional body. The Commission sees substance in the above suggestion that the legal issues of disqualifications under the Tenth Schedule should also be left to the President and the Governors of the States concerned, as in the case of all other post-election disqualifications of sitting MPs, MLAs and MLCs, under Articles 103 and 192 of the Constitution. As in the other cases of the disqualifications under the said Articles 103 and 192, in the case of disqualifications under the Tenth Schedule also, the President or the Governor may act on the opinion given by the Election Commission. The three-member Commission gives its opinion to the President/Governors in the matters of post-election disqualification after giving full opportunity to the parties concerned. If decisions relating to anti-defection matters are rendered by the President or the Governor, on the opinion of the Commission, the same would receive more respect and acceptability from the common people. The Commission would like to make it clear that it is not making the above proposal on its own so as to extend its jurisdiction, but is
2. Definition of words ‘voluntarily giving up membership of a political party’

The words ‘voluntarily giving up membership of a political party’ must be comprehensively defined.\(^{692}\)

3. Limited Grounds of Disqualification

Disqualification should be limited to cases where (a) a member voluntarily gives up the membership of his political party, (b) he votes or abstains from voting in the House with regard to a Confidence Motion, No-confidence Motion, Adjournment Motion, Money Bill or financial matters contrary to any direction issued in this behalf by the party to which he belongs to, and in no other case.\(^{693}\)

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merely clarifying that it would not shirk its responsibility of tendering opinion to the President/Governors in such matters, if such a duty is cast upon it”.

III. Constitution Review Commission (2002), paragraph 4.18.2 “......further the power to decide questions as to disqualification on ground of defection should be vest in Election Commission instead of in the Chairman or Speaker of the house concerned”

IV. At the symposium on Anti-defection law, on 23 September 2008, Speaker Somnath Chatterjee said that “......it is my considered view that it is desireable and indeed necessary that the jurisdiction and authority to deal with the matters of defection as provided in the Tenth Schedule need not be continued exercised by presiding officers and the power should be conferred on some other authority like special tribunal comprising people well versed in law or an authority like Election Commission.”

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\(^{692}\) Halim Committee on anti-defection law (1998).

\(^{693}\) I. Dinesh Gosswami Committee on Electoral Reforms (1990)

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:— I. This Act may be called the Constitution (Amendment) Act, 2010. 2. In the Tenth Schedule to the Constitution,— (i) in sub-paragraph (1) of paragraph 2,— (a) for the words "shall be disqualified for being a member", the words "shall cease to be a member" shall be substituted; (b) for clause (b), the following clause shall be substituted, namely:— "(b) if he votes or abstains from voting in such House with regard to a— (i) motion expressing confidence or want of confidence in the Council of Ministers, (ii) motion for an adjournment of the business of the House, (iii) motion in respect of financial matters as enumerated in articles 113 to 116 (both inclusive) and articles 203 to 206 (both inclusive), (iv) Money Bill, contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and where the Chairman or, as the case may be, the Speaker of such House makes an announcement, as soon as possible, on receipt of a communication from the political party regarding issue of such direction as aforesaid, to the effect that— (i) the political party or the person or authority authorized by it has issued a direction in respect of voting in regard to motions mentioned in this paragraph; and (ii) the defiance of such direction by a member belonging to that political party shall result in automatic cessation of his membership from the House”........".

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4. Definition of expression original political party
   The term “Original political party” should be defined clearly.694

5. Position of expelled members
   Position of expelled members should be explained in the Tenth Schedule and restrictions like prohibition on joining another party or holding offices in the government are to be imposed on expelled members.695

6. Merger
   Provisions which exempt mergers from disqualification to be deleted.696

7. Voter’s Right
   The voter should have a right to file petition under Tenth Schedule for disqualification of a member of Parliament or State legislature of defection.697

8. Vote cast by a defector
   The vote cast by a defector to topple a government should be treated as invalid.698

9. Pre-poll electoral fronts
   Pre-poll electoral fronts should be treated as political parties under anti-defection law.699

10. Time limit
    The decision on the petition for disqualification under the Tenth Schedule should be taken and delivered in not more than six months and this provision of time limitation should be given a constitutional status by making it a part of the Tenth Schedule itself.

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694 Halim Committee on Anti-defection Law (1998).
695 Ibid.
696 I Law Commission (170th Report, 1999) 3.4.7. II Constitution Review Commission (2002), paragraph 4.18.2 “The Commission recommends that the provisions of the Tenth Schedule of the Constitution should be amended specifically to provide that all persons defecting - whether individually or in groups - from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split, etc. should be scrapped...”.
697 To understand the full import of the emphatic Karnataka High Court 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.” c.f. “Anti Defection Law: A Voter’s right to Redress”, Times of India, 24 April 2011.
698 Constitution Review Commission (2002), paragraph 4.18.2
699 Ibid.
Let us conclude with a sound but an imperative caveat that we must be ever mindful of that the evil of defection is not confined to India only. It is rampant, perpetuating and flourishing in other countries having Parliamentary form of Government. In modern democracies, most of the members are elected to Parliament with substantial support and help from their parties and on the basis of their party manifestos. Constituents cast their votes in favour of contesting candidates not only keeping in mind their person qualities but also the policies and programmes of their parties. It is, therefore, argued that a successful candidate is bound by the pledges made by his party during the electioneering. He is expected to remain loyal to his party and abide by the party discipline. If he chooses to leave the party, he must lose his membership too.

While the law has succeeded in assailing the menace of defection to a reasonable degree, there are certain ambiguities. The Courts of the land have done a fair job in expounding the stance by applying the law to particular facts and circumstances. Thus, there seems to be considerable scope for judicial interpretation, one that may give further clarity on the law and may bring in a wider range of cases within the umbrella of this legislation.

There are several issues in relation to the working of this law which require serious considerations. Does the law, while deterring defections, also lead to suppression of healthy intra-party debate and dissent? Does it restrict representatives from voicing the concerns of their voters in opposition to the official party position? Should the decision on defections be judged by the Speaker who is usually a member of the ruling party or coalition, or should it be decided by an external neutral body such as the Election Commission? These questions stand wide open for academic and constitutional discussions.