Defection have not been something new to the working of Indian Political System. Defections have taken place in other democracies too. Even in United Kingdom there have been quite a few unprincipled defections. In ancient time even there have been examples of defection.

Australian and American democracies have also witnessed defection; except India no other country has devised any mechanism to combat the virus of defection.

The History of defection politics in India is very old, in Ramayana era, we find that Vibishana, the real brother of the King of Lanka has defected from his side and has supported Rama. Although it is an incident of family differences in old Monarchical Rules.

If we come to the British period of Indian rule, we find another example of Shyam Lal Nehru a Congress member of the Central

1. Duverger, Maurice "Party Politics and Pressure Groups (1972), P.5; also see Diwan, Paras, "Aya Ram Gaya Ram: The Politics of Defection" (1979) 21 JILI 291; Also see Sharma, Mool Chand, "Politics of Defections and Democracy" (1979) 13 J.C.P.S 328.

Legislature-Central Legislative Assembly, the Montford reforms to the British side at that time Pandit Moti Lal Nehru has objected and criticised such a decision by the Congress member.

After Shyam Lal Nehru the position remain the same as the Indian Politicians used to defect from one party to another either at the time of elections or at the time of change of Government leadership. In 1950, many MLAs defected from Congress party and formed a new party known as Jan Congress. In 1958 there was wholesale defections which led to the fall of the Sampurnanand Ministry and the Praja Socialist Party which was popularly known as PSP. Parkasham its prominent leader defected and joined Congress to form Government in the State of Andhra Pradesh.

In 1967, after fourth general elections to the House of People there were wholesale defections because Congress retained only majority that is 283 out of 520 seats in the Lok Sabha and it has lost 8 States out of 16 States which went for polls. The phenomenon of defection became acute


4 In 1937 elections which were held under the Government of India Act. 1935, the Congress was returned with absolute majority in the United Provinces. However, the Chief Minister G.B.Pant deemed it proper to induce some members of the Muslim League to Cross the floor and join the Congress. One of these, Hafiz Mohammad Ibrahím was included in the Congress Ministry.

and apparent after the Fourth General Election in one year there have been atleast about 500 defections.

A prominent Congress Leader P.Venkatasuresbaiah moved a resolution seeking for the appointment of a Committee to look into the problem of defection on August 11,1967. The Lok Sabha discussed the subject in detail and the House resolved:

"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 this aspect and make recommendations in this regards."5

Madhu Limaye sought an amendment by praying for the omission of the concluding portion of the original resolution which provided for the proposed committee's evolving of a Special machinery and for taking effective measure by way of a suitable legislation to arrest this growing phenomenon. The Govt. of India appointed the Committee headed by the then Union Home Minister Y.B.Chavan on March 21,1968. The Committee submitted its report on February 18, 1969.

The definition of the term 'defector' recommended by the Committee on Defections was as follows:-

"An elected member of a Legislature who had been allotted the reserved symbol of any political party can be said to have defected,

if, after being elected as a member of either House of Parliament, or of the Legislative Council, or the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to, or association with such political party, provided his action is not in consequence of a decision of the party concerned\textsuperscript{6}.

This definition was accepted, and on the basis of this definition the appointment of a defecting legislator was barred for a period of one year until he goes back to the electorate and gets himself re-elected.

On the issue of banning defection, an imminent jurist-N.A.Palkhivala has spoken very strongly against such a measure. He considers the proposal as "truly savage" and the one which has nothing to do with defections\textsuperscript{7}.

Prior to the enactment of Anti Defection Act, 1985 According to the learned author:

"No greater insult can be imagined to the members of Parliament and the State Legislatures than to tell them that once they became members of a political party, apart from any question of the party constitution and any disciplinary action, which action the party may choose to take, the Constitution of India itself expects them to have no right to form judgement and no liberty to think for themselves, but they must become soulless and


\textsuperscript{7} Palkhivala, NA, "Our Constitution Defaced and Defiled" (1974) p.67'
conscienceless entities who would be driven by their political party in whichever direction the party chooses to push them”.

Till 1973 no material change happened, for the first time the Constitution (32nd Amendment) Bill, 1973 was introduced in the House of people on May 16, 1973. The Bill proposed to amend the Constitution of India and the same had Ten Clauses. But the Bill was opposed and was sent to the select committee and lapse due to dissolution of the House of People on January 18, 1977.

The matter was again considered by a Committee headed by Charan Singh the then Union Home Minister and on the basis of this Committee report the Constitution (48th Amendment) Bill, 1978 was moved before the House of People on August 28, 1978 but the same was hurriedly withdrawn with the leave of the House.

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8 ibid, P.68.
9 The statement of Objects and Reasons:
"When the Report of the Committee on Defections was considered it was felt that the recommendations that a defector should be rendered ineligible for certain offices of profit for a stipulated period would not provide an adequate solution and that it would be more appropriate to amend the Constitution with a view to disqualifying a defector from his continued membership of the legislature".

10 Supra note 3, p.331; also see Mian Bashir Ahmad Vs. State of Jammu & Kashmir AIR 1982 J&K 26; Diwan, Paras, 'Aya Ram Gaya Ram': The 'Politics of Defection'(1979) 21 JILI 291.
Finally, in 1985 the Constitution (52nd Amendment) Bill 1985 was introduced before the Lok Sabha on January 30, 1985. The Bill had the following object and reasons:-

"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 the Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for outlawing defection and fulfilling the above assurance"11.

The term defection has been nicely defined by an eminent author on the subject of defection:-

"Defection may be defined as abandonment of loyalty, duty or principle, or of one's leader or cause. In parliamentary political life, the term has come to connote change of party affiliation or allegiance by a member of a legislature. The traditional term for the latter has, however, been floor crossing which had its origins in British House of Commons where a legislator was supposed to have changed his party allegiance when he crossed the floor and moved from the Government to the opposition or Vice Versa"12.

The Learned Author has further observed:-

"The phenomenon of defection was not something altogether unknown to the older democracies like Great Britain. Political Stalwarts like William Gladstone, Joseph Chamberlain, Winston Churchill and Ramsay Mac Donald were known to have changed their party allegiance at one time, or another.

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11 Constitution (52nd Amendment) Bill, 1985 which received the assent of the Hon'ble President of India on February 15, 1985. The Act came into force with effect from March 1, 1985.
Some of them even more than once. Likewise in Australia, Canada and the U.S.A. there had been instances of politicians defecting from one party to another Indian Politics itself had been deflections Politics right from the pre independence Central Legislative Assembly days. 13

Even the Anti Defection Legislation has come into force, but the history of defection has not come to an end. We find every day one legislator or the other are switching their loyalties to the ruling side in the name of split or merger.

Even after the enactment of the Anti Defection Law there have been defection in the political parties, however the defector always try to manage the magic figure of one-third for splitting the original political party and for merging such split group to some other political party, they try to manage the magic figure of two-third majority of such group or party.

The Anti Defection Law in para 1(a) of the Tenth Schedule to the Constitution has defined the term House14, and Para 1 (b) defined as to what is Legislature party15, at the same time clause (c) of para 1 has defined 'Original political party16 and clause (d) of Para 1 has defined 'Paragraph' as paragraph of the Tenth Schedule.

13 ibid.  
14 "House" means either House of Parliament or the Legislative Assembly or as the case may be either House of the Legislature of a State".  
15 "Legislature Party" in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3, or, as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;  
16 "Original political party", in relation to a member of a House, means the political party
The Jammu & Kashmir High Court while examining the question of defection has quoted Professor Paras Diwan on defection:

"Defection is essentially a question of political morality. And what is objectionable is this, that political immorality is sought to be cured by making defection unlawful, just as in some societies prostitution has been sought to be abolished by making brothel keeping illegal. It is submitted that the cure for defection is not the banning of defection by law (that Law may be held unconstitutional by the Supreme Court being violative of the fundamental rights of freedom of association), but the adoption of a code of conduct on the part of all political parties and politicians that a legislator wants to shift his loyalty. He should first resign from his membership of the legislature and the political party. Then one should not forget that the proposed law (even if constitutionally valid) will not provide a cure for our malady so long as we permit them to join and rejoin or enter into alliance with political parties.

I respectfully agree with the views expressed by Professor Paras Diwan the pre Anti Defection Law enactment period, the political parties should also adopt a model code of conduct for non-admitting the defectors to their fold. Otherwise after the enactment of the Law on this subject, the defection has practically been legalised.

Sub paragraph 4 of Paragraph 2 of the Tenth Schedule has defined political party and has said that a Legislator (either elected or nominated) who on the commencement of Constitution (52nd Amendment) Act 1985, be deemed as a member of a Political party under paragraph 2 (1) which Party has set him up for contesting an election. The Second part of

to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;
Sub paragraph 4 of paragraph 2 of the Tenth Schedule has defined as in any other cases, such a member shall be deemed to have been elected as an independent member of the House as he has been elected as such and not as a candidate set up by any political party for the purposes of Paragraph 2(2) or, as the case may be, deemed to be a nominated member of the House for the purposes of paragraph 2(3)\(^\text{19}\).

The Tenth Schedule to the Constitution, inter alia, provides that an elected member of Parliament or a State legislature, who has been elected as a candidate set up by a political party, and nominated member of Parliament or a State Legislature who is a member of a political party at the time, when he takes his seat. He would be disqualified on the ground of defection, if he voluntarily relinquishes his membership of such political party or if he votes or abstains from voting in the House, contrary to any direction of such party.

An independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election\(^\text{19}\) as a member of such House.

A nominated member of Parliament or a State Legislature who is not member of any political party at the time of his nomination and who has not become member of any political party before the expiry of six months from the date on which he takes his seat. He shall be disqualified

\(^{18}\) Supra note 11, see paragraph 2(4).

from the membership of such House if he joins any political party after the expiry of the said period of six months.

Paragraph 2(1) of the Tenth Schedule to the Constitution of India provides that subject to paragraph 3, 4 and 5 of the Tenth Schedule, a member of a House belonging to any political party shall be disqualified from his/her membership, if he voluntarily gives up his membership of such political party, and if he defies any direction (whip) issued by his political party without any prior permission, or if he abstains from voting without prior permission of his political party, or person or authority authorised to grant such a permission by the party. Such a party, person or authority has been empowered to condone such voting or abstention within 15 days.

Explanation (a) to paragraph 2(1)(b) of the Tenth Schedule to the Constitution of India provides that a member of Parliament or Legislative Assembly or Legislative Council, as the case may be, shall be deemed to belong to such political party which has set him up for the Election as such a member. Explanation (b) to paragraph 2(1)(b) has provided that a nominated member of a House shall be deemed to belong to such political party of which he is a member at the time of such nomination, or in other cases, he is given freedom to join any political party within six months of such nomination from the date on which he takes his seat after due compliance of the provisions of Article 99 or as the case may be, Article 188 of Constitution of India.

Clause 2 of paragraph 2 of the Tenth Schedule has been devoted to the position of independent member of either House of Parliament or either House of State Legislature, or as the case may be, the Legislative Assembly.
of a State or Union Territory, such an independent member is not being allowed to join any political party after his election to such a House.

Paragraph 2 (3) of the Tenth Schedule provided mandatorily that a nominated member, even not free to join any political party after the expiry of a period of six month from the date of his nomination.

The Constitution (Fifty Second Amendment) Act, 1985 by which the Tenth Schedule has been incorporated to the Constitution of India has put forth disqualification of the membership of the Parliamentarians/Legislators as the case may be. The member cannot continue as such member if he defect from his political party and join some other political party.

There have been a controversy regarding the application of the Provisions of the Tenth Schedule at the time of declaration of the election results to the Eleventh Lok Sabha in May 1996, that till the Speaker is elected and the members are administered oath, they are free to change their parties. I respectfully disagree with the above proposition. In my considered opinion Explanation (a) of Paragraph 2 (1)(b) of the Tenth Schedule to the Constitution has specifically provided that:

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Explanation

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

Which means that once the returning Officer of the Constituency accept the candidate's form of nomination as a party Candidate if elected on that ticket, he is not free to defect thereafter.

Paragraph 3 is an exception to the above main provision which has been stipulated in paragraph 2 of the Tenth Schedule. The paragraph 3 of the Tenth Schedule provides that where a member of either House of Parliament, or sole or either House of State Legislature, as the case may be, claims to have splitted his legislature party -original political party which he claim to have splitted. He is required to satisfy only the Constitutional requirement under Para 3 of the Tenth Schedule which is One third of his original political party. The provision of Paragraph 3 has specifically provided that if he satisfied that his group has acquired the magic figure of one third.

Similarly paragraph 4 of the Tenth Schedule provides for a similar exemption, if a member has acquired membership of a new political party which has been formed after split in the original political party. The provision of clause (b) of paragraph 4(1) has specifically exempted cases of a nature where the original political party has merged into some other political party and if some member(s) have not accepted such a merger and

Contrary views are expressed by former Attorney General Soli J.Sorabjee, and Nani Palkhivala. However, P.P.Rao., has taken my view See Bhatnagar, Rakesh, 'When do Anti Defection Rules apply?', The Times of India, New Delhi, Monday May 13,1996, p.11.
opt for working as a separate group, and after such a merger, if any, such a Legislator/Parliamentarian shall be deemed to be member of such newly formed political party the purposes of the Tenth Schedule.

Paragraph 4 (2) of the Tenth Schedule has specifically prescribed that a merger shall not be protected if the group so merged has not acquired the requisite magic figure of two third.

The provisions relating to split and merger have been misused by the political party, parliamentarian or Legislator as the case may be. However, the working of the political party is such that it is difficult to delete such a provision from the statute.

Take example of Former Prime Minister P.V. Narshimha Rao who was Congress (I) Party President was compelled to resign from the President Ship of All India Congress Committee(I). There was lot of hue and cry in the Congress cadre and the Party President was not willing to resign. The party leaders also demanded resignation of Rao.

Prior to such a demand, Rao has himself set up a system where the Ministers are made to resign from their public offices if their names figure in a F.I.R. or a Criminal case. But Rao did not accept his own principle in his case and declined to resign. Finally after a litigation which he lost before the apex court and there after, the direction for reconsideration of

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2 Bal Ram Jakhar, resigned as Union Agriculture Minister; V.C. Shukla as Water Resources Minister; Madhav Rao Scindia as Human Resources Minister; Buta Singh as Civil Supplies Minister; Arvind Netam as State Agriculture Minister etc.etc. BJP leader, L.K. Advani, resigned from the Tenth Lok Sabha on his being chargesheeted in Jain Hawala Dairy case.
his case in the light of certain facts which also have the same fate, as the Special Judge designated by the High Court of Delhi has also affirmed the earlier order passed by the Chief Judicial Magistrate. The High Court, in its order, has also
summon Narshimha Rao in Lakhu Bhai Pathak cheating case. Finally, Rao resigned from the Presidentship of Congress party.

In the Indian Political system, the head of a party is a person who matter the most and the rest of the cadre of the Party is to follow him, and on receipt of his signal on any issue and there may be a situation where a Parliamentarian may be having differences of ideological nature and such a provision(e.g. split or merger) might be necessary to protect the elected Legislators, liberty in such a situation.

Paragraph 5 of the Tenth Schedule to the Constitution is also an exception to Paragraph 2 which protect exempt the Speaker/Deput., Speaker or Chairman/Deputy Chairman, as the case may be, if he/she resign from his/her political party after he/she are elected as such, and there-after if they rejoin that political party or even become as a member of another political party.

Paragraph 6 (1) of the Tenth Schedule to the Constitution provides that the question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House. Proviso to paragraph 6 (1) of the Tenth Schedule has further provided that where such a question is with reference to the Chairman or the Speaker himself, it will be decided by a member of the House elected by it for the said purpose.
Sub paragraph 2 of Paragraph 6 has put a fiction as to that the Proceedings under the Tenth Schedule before the Speaker/Chairman in relation to any question as to disqualification of a member of a House will be deemed to be the proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212. The Supreme Court has observed that in the past even the Tenth Schedule has been used, the Presiding Officers of the House has not laid down their verdict for the approval before the House concerned. Hence, it is a fiction.

Paragraph 7 of the Tenth Schedule which barred the Jurisdiction of all Courts to entertain any matter connected with disqualification of a House under Tenth Schedule. The Supreme Court has held that Paragraph 7 is invalid.

Paragraph 8 of the Tenth Schedule has empowered the Presiding Officer of the Houses of Parliament/Legislature of state, as the case may be, to make Rules for making provision regulating the record of political parties and members and to give effect to the provisions of the Schedule. The rules are required to be laid before the House concerned and such rules are subject to approval/modifications/disapproval by the House concerned.

The Supreme Court examined the question as to the Speaker of the Goa Legislative Assembly, acting as the Adjudicatory authority under

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ibid

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\[3\] Kihoto Hollohan Vs.Zachillhu 1992 Suppl.(2) SCC 651; also see Prakash Singh Badal Vs. Union of India AIR 1987 P&H 263;also per Ravi S.Naik Vs. Union of India (1994) Supple (2) SCC 641.

\[4\] ibid

\[5\] ibid; also see Prakash Singh Badal Vs. Union of India, AIR 1987 P&H 263.

\[6\] Dr.Kashi Nath G.Jalmi Vs.The Speaker (1993)2 SCC 703.
the Tenth Schedule to the Constitution, have power of review his decision.

The Supreme Court has observed that:

"There is no scope for reading into the Tenth Schedule any of the powers of the Speaker which he otherwise has while functioning as the Speaker in the House, to clothe him with any such power in his capacity as the statutory authority functioning under the Tenth Schedule of the Constitution."

The Supreme Court further laid down that:

"existence of judicial review against the Speaker's order of disqualification made under para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker, which can be read in the Tenth Schedule by necessary implication. The need for correction of errors in the Speaker's order made under the Tenth Schedule is met by the availability of judicial review against the same."

Now, we will examine the actual working of the provisions relating to defection enacted under the Tenth Schedule to the Constitution of India with some of the recent examples on this subject.

Unfortunately, the defection has not spared even the cadre based parties if we examine the recent split in Gujarat Legislative Assembly-BJP Legislature party where the 46 MLAs who have defected from the BMP Legislature party and splitted the original Political Party and its leader is the Chief Minister of Gujarat, Shanker Sinh Vaghela who even has proved

ibid, p.720
ibid, P.723; also see Kihoto Hollohan Vs. Zachillhu (1992) Supple(2)SCC 651; G.Viswanathan V.The Speaker T.N.Legislative Assembly (1996) 2 SCC 353.
majority in the House i.e., Legislative Assembly of Gujarat with the help of Congress party.

There the 46 MLAs after the expulsion of their leader Shanker Sinh Vaghela from BJP, splitted the B.J.P. legislature party. They submitted a memorandum to the Speaker who did not take any action on that, then they submitted a Memorandum to the Governor of the State of Gujarat who in turn sent the Memorandum signed by the 46 MLAs to the Speaker of the Gujarat Legislative Assembly. The Speaker verified the signature of those MLAs and certified that they are genuine signatures except the one. In the meantime, the ruling B.J.P. kidnapped and made hostage the 18 of such dissident MLAs.

But it may be important to notice that BJP has not taken any step prescribed under Tenth Schedule of the Constitution. The Governor directed the Chief Minister to prove his majority in the House. The Assembly Session was summoned for the same. On 3rd September, 1996 the Deputy Speaker Dhabhi who was Presiding as Acting Speaker of the House, has rightly decided to recognise the split group as Maha Gujarat Janta party and allotted them separate seats in the House, the BJP Legislature Party opposed it and, thereafter, the House was adjourned sine die.

The then Chief Minister of the State of Gujarat Mehta requested the Governor for giving him another opportunity for proving his majority in the House. The Governor asked him to prove his majority by 13th of September, 1996, but the then Chief Minister choose to prove his majority before the House on 18th of September 1996 and there by violated the Constitutional direction of the Governor. But the Governor summoned the
House, even when the Constitutional direction was not complied with by
the then Chief Minister on 17-18th of September, 1996. The Assembly had
an agenda to condole the death of the late Speaker Patel and the next day,
i.e., September 18, 1996, was fixed for proving majority in the House. But
the BJP legislature party after the condolence, all of the sudden, decided
to prove majority on the floor of the House, that very day.

It may be pertinent to mention here that the Deputy Speaker who
was to preside over as Acting Speaker was hospitalised during the
preceding night. The Chief Minister himself decided as to who will preside
over the sitting of the Assembly as Protem Speaker. The Constitution
prescribes that either Governor should appoint a Protem Speaker or, the
Legislature may by a resolution appoint any member to Preside over in
such a situation. The Chief Minister just named a BJP MLA to preside
over the sitting of the House without even adopting a formal resolution.

The opposition—the Congress Party and the Maha Gujarat Janta Party
opposed such a move and the the Opposition Members were beaten by the
Hooligans, it was alleged that the Chief Minister was listened in the House
saying (call the plain cloth persons and forget the Constitution). This is
unfortunate incident.

At this stage we may examine the issue which was disputed by the
BJP as to whether the Deputy Speaker of a House has the power to
adjudicate on the issues involving the disqualification under the Tenth
Schedule to the Constitution. In my considered opinion the Deputy Speaker
has all the powers to adjudicate upon in relation to the question of

9 The Hindustan Times, New Delhi, Wednesday September 18, 1996; also be The Times of
India', New Delhi, Wednesday, September 18, 1996.
We may examine the split affected during the Tenth Lok Sabha. We find that the Narshimha Rao Government was saved from fall by successive defection in Janta Dal Parliamentary party as in the first instance Ajit Singh with his 20 members defected and formed a separate group as Janta Dal (A), later on, the 'Seven Saviour' has further splitted the Janata Dal(A) and Subsequently, joined Congress party. Thereafter the Ajit Group which remained outside also joined the Government. All these splits and mergers are protected under paragraph 3 or 4, as the case may be, of the Tenth Schedule to the Constitution.

However, the judgement which was delivered by Shiv Raj Patil, Speaker of the Tenth Lok Sabha is misconceived as the judgement has considered the effect of the expulsions. It is a fact of common knowledge that as the Anti Defection Bill, 1985 as introduced had three provisions on which the elected legislators were to be disqualified. It is a thing a common knowledge that the said clause (C) of paragraph 2(1) was deleted from the Bill itself, after the demand of the opposition leaders as well as Congress Party which was accepted by the then Prime Minister.

Secondly, the Speaker has said that the split in the legislature party is a continuous affairs till the issue is adjudicated by the Speaker. In my 

10 Contrary view has been expressed by Shanti Bhushan, former Law Minister of India; Arun Jaitly Sr. Advocate, Soli J.Sorabjee former Attorney General of India reported in the Hindustan Times, New Delhi, Tuesday September 4, 1996.

11 Decision of the Hon'ble Speaker, Lok Sabha Dated 1 June, 1993 under Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection)
considered opinion, the split can not be termed as a continuous affair and by such a decision, it is evident that the Speaker has failed to give true meaning to the provisions of the Tenth Schedule. By such an adjudication, the faith in the Presiding Officer has decreased and even doubts have been created as to whether the power of adjudication has rightly been conferred upon the Speaker.

The Supreme Court has examined the defection which has taken place in Goa Legislative Assembly in Ravi S.Naik Vs. Union of India12. The Supreme Court has held that till the numerical strength of one third is complied with, if a legislator change his party such a change shall be termed as defection and the members shall be disqualified under the Tenth Schedule.

In U.P. legislative Assembly as well as Legislative council their have been many instances of defection, but they rightly were protected, as they satisfy the requirement of paragraph 3 or paragraph 4 of the Tenth Schedule.

In Haryana Legislative Assembly the then Chief Minister, Bhajan Lal engineered a split in 11 members Haryana Vikas Party of Bansi Lal by a group of 4 MLA's - Amar Singh, Lehri Singh, Dharmal and Peer Chand. Subsequently, they defected to Congress side by first splitting and forming a new group known as Haryana Vikas Party (A) but the defection was protected by paragraphs 3 & 4 of the Tenth Schedule.

In May 1994 Sanchaman Limboo, defected with a group of 18 MLAs Sikkim Sangram Parishad in a House of 31 - by defying the then Chief Minister Nar Bahadur Bhandari. The split was protected under paragraph 3 of the Tenth Schedule as the magic figure of one third was complied with.

Rules, 1985 In the Janata Dal Case, Lok Sabha Secretariat, New Delhi, June 1993.
12 1994 Suppl.2 SCC 641.
Manipur has also witnessed defection where in BJP Legislature party was merged by E. Kunjeshwar Singh and the merger was rightly protected under paragraph 4 of the Tenth Schedule.

Andhra Pradesh Chief Minister Chandra Babu Naidu engineered split in Telugu Desam Party headed by the then Chief Minister N.T. Rama Rao and the Speaker has rightly applied paragraph 3 of the Tenth Schedule as the Telgu Desam Party has elected Naidu as its leader and the majority of the party as well as of the House has supported him.

Bihar Legislative Assembly has witnessed defections even by BJP legislator - Inder Singh Namdhari who is presently Minister in the Laloo Prasad Government. It is surprising to note that a person from a cadre based party has chosen to defect. It is difficult for the Parliamentary system to avoid defection, if the cadre based parties are splitted like this. Secondly, some MLA's belonging to Samta Party joined Janta Dal and JMM (M) MLA and Bihar Peoples Party MLA has also defected to Janta Dal and the defection was protected under paragraph 3 of the Tenth Schedule.

Recently, in August 1996, seven members of Ruling Janta Dal in the Legislative Council defected to R.K. Hegde's Rashtriya Nav Nirman Vedike and they are protected under Tenth Schedule as they are one third of the Legislature Party.

Arunachal Pradesh Chief Minister who was belonging to Congress Party splited the party and the majority of the House as well as party as 41/58 in a House of 60 has supported Gegong Apang, and he floated a regional party in the name of Arunachal Congress and the said split has been rightly protected under paragraph 3 of the Constitution.

As we have already discussed, the Tenth Lok Sabha, has the Congress Party as a single Largest Party having 251 members and it had splitted Janta Dal Parliamentary Party for five times and finally gained a
clear cut majority of 267 in the House of People which has an effective strength of 528. All the times the member of the Janta Dal Parliamentary Party splitted their original political party at the first instances by complying with the 1/3rd criteria laid down by the Constitution under Paragraph 3 of the Tenth Schedule. and later on, they merged into the Congress Party by complying with the provision of para 4 of the Tenth Schedule.

The Eleventh Lok Sabha which was Constituted in May 1996, has a rare distinction as the Present Government headed by H.D. DeveGodwa is lead by a 13 party minority coalition. The Government is supported by the Congress Party from outside in the name of secular Government and the Bharatiya Janta Party which is single largest party has to sit in the opposition in spite of the fact that the President of India has adopted the convention that the Single Largest Majority party should be given the first preference and such a government was replaced by a coalition government which supported by the Congress from outside. A surprising thing has happened that a party which has to its command only 45-46 MPs in a Lok Sabha a House of 545. This is a healthy trend of Indian Democracy. Surprisingly, there have been no defection even in such a position.

If we examine the recent position of Uttar Pradesh, Haryana, Rajasthan, we find that in all the 3 Assemblies no party have majority of its own.

In Haryana, the 33 members Haryana Vikas Party is supported by 11 members BJP Legislature Party and the strength of the House is 90. The Government is supported by 10 Independent MLA's as well.
In Rajasthan similarly the BJP Government is supported by independents MLAs. It is pertinent to mention here that there have been no defection in these Assemblies.

In recently concluded elections in Uttar Pradesh (October 1996), a surprising event has happened as no political party or coalition has been in a position to muster the majority in the House. The BJP which has 174 MLA in a House of 425 which is a single largest party has stacked its claim to form Government but the Governor has declined their offer to from a government and has taken a view that they are not having majority nor they are claiming with a specific list that this group or party will support them. The Samajwadi Party is second largest and Bahujan Samaj party is third in the tally.

It may be an important aspect, that inspite of the above position there have been no defection in any political party till this analysis is being stipulated such a position in the Democracy is appreciable and the working of principle based politics can be developed in India.

The Speaker or Chairman, as the case may be, have been empowered to decided the question of defection which is also a new dimension of the Anti Defection Law. Prior to the enactment of the Anti Defection Law, such question were not decided by the Presiding Officer of the House. There are two dimension of the conferring of the power of adjudication on the Presiding Officers, one that the Presiding Officer is a Political person and he may be bias towards his Political party. Secondly his tenure is also dependent on the life of the House.

November 4, 1996.
In my opinion the power of adjudication has rightly been exercised except by the then Speaker of Lok Sabha, Shivraj Patil in Janta Dal case which he decided on June 1st, 1993 and the Late Speaker of the Gujarat Assembly Patel, as in both the cases the Speaker have exceeded their jurisdiction.

The Supreme Court has laid-down that the Speaker who is adjudged as adjudicatory authority act as a Tribunal under paragraph 6 (1) of the Tenth Schedule and his judgment is final, only a limited judicial review is available with the High Courts under Article 226 and 227 and the Supreme Court under Article 136 of the Constitution. The Courts have been adjudicating on such issues but now the specialised tribunal are constituted in different fields including the Anti Defection Law. The Supreme Court has laid-down in Kihoto Hollohan case that Para 7 of the Tenth Schedule is invalid as the Act has not been assented by the President of India after the Bill also has been passed by one half of the State Legislatures as proviso to article 368 (2) has not been complied with which is a mandatory requirement.

In Ravi S. Naik case the Supreme Court has laid-down that for split of a Legislature party the compliance of para 3 is mandatory. The court has further held that for defecting from a party the written document is not necessary. This is for the Speaker to examine on the basis of the acts and Conduct of the Legislator concerned, who has defected from his original Political party under para 2 of the Constitution.

14 Supra note 4; also see Ravi S.Naik Vs. Union of India 1994 supp.2 SCC 641, Prakash Singh Badal Vs. Union of India AIR 1987 P&H 263.
In Kashi Nath G.Jhalmi\textsuperscript{16} case the Supreme Court has laid down that the Speaker has no power to review his judgement as the power is not specifically conferred by the Tenth Schedule. The non compliance of the rules framed under para 8 of the Tenth Schedule does not commit any illegality, if they have not been complied with. This has been held as a mere procedural irregularity and not illegality.

The issue relating to defection has been examined in detail in relation to the recent examples and wherever necessary, I have pointed out that the provisions are incomplete or the action taken under the Tenth Schedule is not within the permissible limits stipulated by the Tenth Schedule.

Looking into the foregoing critical analysis, the following suggestions with the proposed provisions amending the present provisions of the Tenth Schedule are being submitted.

1. Since the Constitution (Fifty second amendment) Act, 1985 does not have a disqualification for a particular period even if it is held that the legislator is disqualified under the Tenth Schedule. The Representation of the People Act disqualify the member so disqualified if the disqualification is proved for a particular period specified in the Act itself. The provisions of Anti Defection Law does not debar the member on similar line, so there is no penalty to the member of a permanent nature even if he violates the provision of the Tenth Schedule. To penalise such a member so that the law could be effective the disqualified member of either House of Parliament or sole or either House of State Legislature, after sub-paragraph (4) of paragraph 2 of the Tenth Schedule the following sub-paragraph (5) may be added:

\textsuperscript{16} (1993) 2 SCC 703.
(5) Without prejudice to the existing provisions in this schedule a disqualified for being a member of the House under sub-paragraph (1) shall be debarred from contesting any election or holding any office of profit for a period of one year."

2. In paragraph 3 of the Tenth Schedule after clause (b) the following clause (C) may be added:

"(C) On the date of such defection, the member(s) shall be deemed to have been defected under this paragraph, if such a decision is taken by such member(s) along with the person so defected on a particular day".

3. After sub-paragraph (1) of paragraph 4 the following sub-paragraph may be added:

"(C) On the date of such merger the member(s) shall be deemed to have been protected under this paragraph, if such a decision is conveyed by such member along with the person so merged on a particular day".

4. Firstly it would be expedient and proper if a mechanism be developed as provided in Article 103 of the Constitution and it would be better that the whole provision of paragraph 6 be deleted and a new provision on the lines of Article 103 or Article 192 be inserted as under:

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

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the President - of Parliament, or the Governor of such State or Union Territory, if it relates to the member if it relates to the member of State Legislature and his decision shall be final.

(2) Before giving any decision on any question, the President or, as the case may be, Governor of relevant State
shall obtain the opinion of the Election Commission and shall act according to such opinion"

OR

(i) **Secondly**, the provisions of Tenth Schedule are not applicable to the Chairman of the Council of States, as Article 67 (b) of the Constitution of India provides for his removal and if such a proviso is not added to sub-paragraph (1) of paragraph 6, there may be a conflict between Article 67 and Tenth Schedule. To avoid such a situation a following second proviso may be added after the first proviso namely :-

"Provided further that the provisions of this Schedule are not applicable in case of the Chairman of the Council of States".

(ii) In my opinion, there should be a stipulated time schedule within which the adjudication in the matters relating to this Schedule should be effected and the provision in this respect may be added. To avoid the lingering on situation after the so proposed second proviso, the following third proviso may be added namely :-

"Provided also that the Speaker/Chairman or otherwise, shall finally dispose of any question which arises as to whether a member of a House has become subject to disqualification under this schedule within a stipulated period of three months."

(iii) In paragraph 6, of the Tenth Schedule, till the above provision is substituted, to clarify the position in relation to the
empowerment of the Deputy Speaker or Deputy Chairman, as the case may be, present sub-paragraph (2) may be deleted and the following sub-paragraph (2) may be substituted to empower the Deputy Speaker or Deputy Chairman to discharge the functions under the Tenth Schedule to the Constitution of India:

"(2) While the office of Speaker/Chairman is vacant due to his death, resignation, removal, illness or otherwise, the Deputy Speaker/Deputy Chairman shall discharge the functions of Speaker/Chairman under this Schedule."

When the Speaker/Chairman, as the case may be, is unable to discharge his function, the Deputy Speaker/Deputy Chairman shall act as Speaker/Chairman, until the Speaker/Chairman resumes his duties.

If such a jurisdiction is conferred upon the President or the Governor, as the case may be, the provisions of the Tenth Schedule can be effected in better way and the partisan attitude of the Speaker or Chairman, as the case may be, may be avoided.