CHAPTER-5

JUDICIAL ARTICULATION OF ANTI-DEFECTION LAW IN INDIA : EMERGING TRENDS

1. Introduction

The Tenth Schedule to the Indian Constitution, that is popularly referred to as the ‘Anti-Defection Law’ was inserted by the 1985 Amendment to the Constitution. This succinct legislation contains 8 paragraphs- the first setting out definitions, the second stating the disqualifications, the third (now deleted by the 2003 Amendment to the constitution) about splits within the party, the fourth about a disqualification not to apply in case of mergers, the fifth setting out certain exemptions, the sixth and seventh- stating the person who would decide disputes and barring jurisdiction of courts in respect of questions relating to disqualification of a member, and finally, the last paragraph enabling a Speaker or a Chairman to make rules for a House in order to give effect to the provisions contained in the Schedule. The Courts of the land have been called upon to adjudicate upon and interpret almost all these provisions. Perhaps the one clause that has come under the judicial microscope the maximum number of times, is para 2 that sets out the disqualifications of a member. Anti-defection law when it was passed, it aimed at bringing down the political defect but due to ever increasing political dishonesty and corruption this law never evolved properly and now a question have arose that ‘whether achieving the goals of this law a reality or a myth? Given the vicissitudes of Indian politics, the courts have taken defiant stands against acts of defection. In this chapter, anti-defection law and its diverse provisions have been examined in greater detail below aided by case laws.

Anti-defection law, its main intent is to combat ‘the evil of political defections.’ This law was passed soon after Lt. Shri. Rajiv Gandhi became the Prime Minister of the country with a massive mandate. This law would not have been passed if there had been no Rajiv Gandhi and his government with an unparalleled massive majority. This law was passed so that it curbs the political defections but the ever increasing hunger of our legislatures and with our excellent legal fraternity it was not a difficult task to find some loopholes in this law and they used it to their interest.
2. Judicial Approach

There are several issues in relation to the working of this law which need to be discussed. 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?

(i) Freedom of Speech and Expression

The issue whether the right to freedom of speech and expression is curtailed by the Tenth Schedule was taken up by Supreme Court in Kihota Hollohan Case. The court observed that: "The provisions do not subvert the democratic rights of elected members in Parliament and state legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution." The Supreme Court acknowledged that the petitioners had raised questions of far reaching significance and great constitutional importance. The court observed that on the one hand there was the real and imminent threat to the very fabric of Indian democracy posed by certain levels of political behaviour, conspicuous by their utter and total disregard of well recognised political properties and morality. These trends were seen to degrade the tone of political life and, in their wider propensities, were and still are dangerous to and undermine the very survival of the cherished values of democracy.

On the other hand, there was, as in all political and economic experimentations, certain side-effects and fall-out which might affect and hurt even honest dissenters and conscientious objectors. These are the usual plus and minus of all areas of experimental legislation. In these areas the distinction between what is constitutionally permissible and what is outside it is marked by a ‘hazy grey-line’ and it is the Court’s duty to identify, “darken and deepen” the demarcating line of constitutionality. This was a task in which some element of Judges’ own perceptions of the constitutional ideals inevitably participate. It was held that there is no single litmus test of constitutionality. Any suggested sure decisive test might after all furnish a ‘transitory delusion of certitude’ where the ‘complexities of the strands in the web

573 Kihoto Hollohan V. Zachillhu, 1992 Supple (2) SCC 65.
of constitutionality which the Judge must alone disentangle’ do not lend themselves to
easy and sure formulations one way or the other. It is here that it becomes difficult to
refute the inevitable legislative element in all constitutional adjudications. All
distinctions of law, even Constitutional law are, in the ultimate analyses, “matters of
degree”. At what line the ‘white’ fades into the ‘black’ is essentially a legislatively
perceived demarcation.\textsuperscript{574} Thereafter the Supreme Court went on to reject the
contention of the petitioner that the rights and immunities under article 105(2) of the
Constitution which according to him are placed by judicial decisions even higher than
the fundamental-right in article 19(1)(a), had violated the Tenth Schedule. The
Supreme Court had two objections to the acceptability of this contention. The first
was that the Tenth Schedule does not impinge upon the rights or immunities under
article 105(2). The freedom of speech of a Member is not an absolute freedom. That
apart, the provisions of the Tenth Schedule do not purport to make a Member of a
House liable in any ‘Court’ for anything said or any vote given by him in Parliament.
It is difficult to conceive how article 105(2) is a source of immunity from the
consequences of unprincipled floor-crossing. For the second objection reference was
made to Jyoti Basu v. Debi Ghosal\textsuperscript{575}, wherein it was observed: “A right to elect,
fundamental though it is to democracy, is, anomalously enough, neither a fundamental
right nor a Common Law Right. It is pure and simple, a statutory right. So is the right
to be elected. So is the right to dispute an election. Outside of statute, there is no right
to elect, no right to be elected and no right to dispute an election. Statutory creations
they are, and therefore, subject to statutory limitation”. Thereafter the court concluded
by stating that democracy is a basic feature of the Constitution. Whether any
particular brand or system of Government by it self, has this attribute of a basic
feature, as long as the essential characteristics that entitle a system of government to
be called democratic are otherwise satisfied is not necessary to be gone into. It was
further observed that elections conducted at regular, prescribed intervals are essential
to the democratic system envisaged in the Constitution. So is the need to protect and
sustain the purity of the electoral process. That may take within it the quality, efficacy
and adequacy of the machinery for resolution of electoral disputes. From that it does
not necessarily follow that the rights and immunities under sub-article (2) of article

\textsuperscript{574} Oliver Wendell Holmes - Free Speech and the Living Constitution (1991 Edition: New
York University Publication)
\textsuperscript{575} (1982) 3 SCR 318 (326)
105 of the Constitution, are elevated into fundamental rights and that the Tenth Schedule would have to be struck down for its inconsistency with article 105(2) as urged by the petitioners. The contention stood rejected on both these grounds.

Parliamentary democracy envisages that matters involving implementation of policies of the Government should be discussed by the elected representatives of the people. Debate, discussion and persuasion are, therefore, the means and essence of the democratic process. During the debates the Members put forward different points of view. Members belonging to the same political party may also have, and may give expression to, differences of opinion on a matter. Not unoften the views expressed by the Members in the House have resulted in substantial modification, and even the withdrawal, of the proposals under consideration. Debate and expression of different points of view, thus, serve an essential and healthy purpose in the functioning of parliamentary democracy. At times such an expression of views during the debate in the House may lead to voting or abstinence from voting in the House otherwise than on party lines.

But a political party functions on the strength of shared beliefs. Its own political stability and social utility depends on such shared beliefs and concerted action of its Members in furtherance of those commonly held principles. Any freedom of its Members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance - nay, indeed, its very survival. Intra-party debates are d course a different thing. But public image of disparate stands by Members of the same political party is not looked upon, in political tradition, as a desirable state of things.

Clause (b) of sub-para (1) of Paragraph 2 of the Tenth Schedule gives effect to this principle and sentiment by imposing a disqualification on a Member who votes or abstains from voting contrary to "any directions" issued by the political party. The provision, however, recognises two exceptions: one when the Member obtains from the political party prior permission to vote or abstain from voting and the other when the Member has voted without obtaining such permission but his action has been condoned by the political party. This provision itself accommodates the possibility that there may be occasions when a Member may vote or abstain from voting contrary to the direction of the party to which he belongs. This, in itself again, may provide a clue to the proper understanding and construction of the expression "Any Direction"
in clause (b) of paragraph 2(1) - whether really all directions or whips from the party entail the statutory consequences or whether having regard to the extraordinary nature and sweep of the power and the very serious consequences that flow including the extreme penalty of disqualification the expression should be given a meaning confining its operation to the contexts indicated by the objects and purposes of the Tenth Schedule.

Indeed, in a sense an anti-defection law is a statutory variant of its moral principle and justification underlying the power of recall. What might justify a provision for recall would justify a provision for disqualification for defection. Unprincipled defection is a political and social evil. It is perceived as such by the legislature. People, apparently, have grown distrustful of the emotive political exultations that such floor-crossings belong to the sacred area of freedom of conscience, or of the right to dissent or of intellectual freedom. The anti-defection law seeks to recognise the practical need to place the proprieties of political and personal conduct whose awkward erosion and grotesque manifestations have been the base of the times above certain theoretical assumptions which in reality have fallen into a morass of personal and political degradation. We should defer to this legislature wisdom and perception. The choices in constitutional adjudications quite clearly indicate the need for such deference.\(^{576}\)

The bench rejected the contention that the distinction between the conception of "defection" and "split" in the Tenth Schedule is so thin and artificial that the differences on which the distinction rests are an outrageous defiance of logic. The Supreme Court observed that this submission was so attractively articulated but on closer examination does not hold good. The underlying premise in declaring an individual act of defection as forbidden is that lure of office or money could be presumed to have prevailed. Legislature has made this presumption on its own perception and assessment of the extant standards of political proprieties and morality. At the same time legislature envisaged the need to provide for such "floor-crossing" on the basis of honest dissent. That a particular course of conduct commended itself to a number of elected representatives might, in itself, lend credence and reassurance to a

\(^{576}\) Relied upon Kazurbach V. Morgan, 384 US 641 "Let the end be legitimate, let it be within the Scope of the Constitution and all means which are appropriate, which are adopted to that end..." are constitutional
premise of bonafides. The court summarised its rejection of this contention by stating that-

“The presumptive impropriety of motives progressively weakens according as the numbers sharing the action and there is nothing capricious and arbitrary in this legislative perception of the distinction between ‘defection’ and ‘split’. Where is the line to be drawn? What number can be said to generate a presumption of bona fides? Here again the Courts have nothing else to go by except the legislative wisdom and, again, as Justice Holmes said, the Court has no practical criterion to go by except “what the crowd wanted”. We find no substance in the attack on the statutory distinction between ‘defection’ and ‘split’. That the paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected Members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended. The provisions of Paragraph 2 do not violate any rights or freedom under articles 105 and 194 of the Constitution. The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections. The contention that the provisions of the Tenth Schedule, even with the exclusion of paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected Members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected.

(ii) Voluntarily Giving Up Membership & Resignation

In Ravi S Naik Case\(^7\) the issue was whether only resignation constitutes voluntarily giving up membership of apolitical party. The Court said: “The words “voluntarily giving up membership” have a wider meaning. An inference can also be drawn from the conduct of the member that he has voluntarily given up the membership of his party.”

(iii) Voluntarily Giving Up Membership & Joining New Party

In G. Vishwanathan Case\(^8\) the issue was whether a member can be said to voluntarily give up his membership of a party if he joins another party after being expelled by his old political party. The court said: “Once a member is expelled, he is treated as an ‘unattached’ member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So if he joins a new party after

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\(^7\) Ravi S Naik V. Union of India AIR 1994 SC 1558.
\(^8\) G. Vishwanathan V. Speaker, Tamil Nadu Legislative Assembly (1996) 2 SCC 353
being expelled, he can be said to have voluntarily given up membership of his old party.” The Supreme Court commenced its discussion by stating that to have a proper understating of this issue a reference to the legislative background can be useful. After referring to the same the court opined that the scope of the legal fiction enacted in explanation (a) to paragraph 2(1) of the Tenth Schedule assumes importance in this context. By the decision of the Court it is fairly well settled that a deeming provision is an admission of the non-existence of the fact deemed. The Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. It means that the Courts must assume that such a state of affairs exists as real, and should imagine as real the consequences and incidents which inevitably flow there from, and give effect to the same. The deeming provision may be intended to enlarge the meaning of a particular word or to include matters which otherwise or may not fall within the main provision. The court relied upon law laid down in this regard in East End Dwellings Co. Ltd. Case579. Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, the court was reminded of what was said by Lord Asquith in the case of East End Dwellings Co. Ltd. that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless, prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it. One must not permit his “imagination to boggle” when it comes to the inevitable corollaries of that state of affairs.

Thereafter the court opined that it appeared that since the explanation to paragraph 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the 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’.

The further question is when does a person voluntarily give up his membership of such political party, as provided in paragraph 2(1)(a)? The act of

579 (1952) AC 109; (1951) 2 All ER 587
voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member. The Supreme Court was the view that labeling of a member as 'unattached' finds no place nor has any recognition in the Tenth Schedule. Furthermore, the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House-

1. One who has been elected on his being set up by a political party as a candidate for election as such member;

2. One who has been elected as a member otherwise than as a candidate set up by any political party-usually referred to as an 'independent' candidate in an election; and

3. One who has been nominated.

The categories mentioned are exhaustive. According to the bench it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of the political party and incurs the disqualification. Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the explanation to paragraph 2(1). Such an arrangement and labeling has no legal bearing so far as the Tenth Schedule is concerned. If the contention urged on behalf of the petitioner is accepted it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. The court was therefore, of the opinion that the deeming fiction must be given full effect for otherwise the expelled member would escape the rigour of the law which was intended to curb the evil of defections which had polluted our democratic polity.

The court also held that paragraph 1(b) cannot be read in isolation. It should be read along with paragraphs 2, 3 and 4. Paragraph 1(b) in referring to the Legislative Party in relation to a member of a House belonging to any political party, refers to the provisions of paragraphs 2, 3 and 4, as the case may be, to mean the group consisting
of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paragraphs 2, 3 and 4, as the case may be. Paragraph 2(1) read with the explanation clearly points out that an elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member. This is so notwithstanding that he was thrown out or expelled from that party. That is a matter between the member and his party and has nothing to do so far as deeming clause in the Tenth Schedule is concerned. The action of a political party qua its member has no significance and cannot impinge on the fiction of law under the Tenth Schedule.

On the facts of the case the Supreme Court too upheld the order of the Speaker and refused to interfere rejecting all contentions of the respondent and went on to hold that- “If he on his own volition joins another political party, as the appellants did in the present case, he must be taken to have acquired the membership of another political party by abandoning the political party to which he belonged or must be deemed to have belonged under the explanation to paragraph 2(1) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal.” That since the explanation to paragraph 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the 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’. Being treated as ‘unattached’ is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the explanation to paragraph 2(1). Such an arrangement and labeling has no legal bearing so far as the Tenth Schedule is concerned.

When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will such their decisions are amenable to judicial review insofar as infirmities based on violation of constitutional provisions, mala fides, natural justice and perversity are concerned.

In the present case, the court has further clarified and underlined the law to the effect that mere procedural irregularity or absence of strict adherence to procedure laid down in the rules framed under the Tenth Schedule cannot affect the legitimate
decision in compliance with the constitutional provisions intended to disqualify the defecting members. The rules cannot be interpreted too strictly without reference to the provisions and the objectives of the Constitution (in the Tenth Schedule).

(iv) Jurisdiction of Courts

In *Kihota Hollohon Case*, 580 the issue was whether paragraph 7 of the Schedule barring the jurisdiction of courts in cases of disqualification is constitutional. The Court said: “The paragraph seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and Supreme Court jurisdiction in such cases. Any such provision is required to be ratified by state legislatures as per Article 368(2). The paragraph was therefore held invalid as it had not been ratified.” The thrust of the point is that paragraph 7 brings about a change in the provisions of Chapter IV of Part V and Chapter V of Part VI of the Constitution and that, therefore, the amending Bill falls within proviso to article 368(2).

The Supreme Court decided to deal with (and reject), at the outset, a submission on a point of construction of Paragraph 7. It was urged that Paragraph 7, properly construed, does not seek to oust the jurisdiction of Courts under article 136, 226 and 227 but merely prevents an interlocutory intervention or a quit-time action. It was further submitted that the words “in respect of any matters connected with the disqualification of a Member” seek to bar jurisdiction only till the matter is finally decided by the Speaker or Chairman, as the case may be, and does not extend beyond that stage and that in dealing with the dimensions of exclusion of the exercise of judicial power the broad considerations are that provisions which seek to exclude Courts’ jurisdiction shall be strictly construed. Any construction which results in denying the Courts is, it is urged, not favoured. 581

The Supreme Court went on to reject this contention while acknowledging that it is true that the provision which seeks to exclude the jurisdiction of Courts is strictly construed. But the rules of construction are attracted where two or more reasonably possible constructions are open on the language of the statute. But, here both on the language of Paragraph 7 and having regard to the legislative evolution of the

580 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
provision, the legislative intent is plain and manifest. The words “no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member” are of wide import and leave no constructional options. This is reinforced by the legislative history of the anti-defection law. The deliberate and purposed presence of Paragraph 7 is clear from the history of the previous proposed legislations on the subject. A comparison of the provisions of the Constitution (Thirty-second Amendment) Bill, 1973 and the Constitution (Forty-eight Amendment) Bill, 1978, (both of which had lapsed) on the one hand and the Constitution (52nd Amendment) Bill, 1985, would bring-out the avowed and deliberate intent of Paragraph 7 in the Tenth Schedule. The previous Constitution (38th and 48th Amendment) Bills contained similar provisions for disqualification on grounds of defection, but, these Bills did not contain any clause ousting the jurisdiction of the Courts. Determination of disputed disqualifications was left to the Election Commission as in the case of other disqualifications under articles 102 and 103 in the case of Members of Parliament and articles 191 and 192 in the case of Members of Legislature of the States. The Constitution (Fifty-second Amendment) Bill for the first time envisaged the investiture of the power to decide disputes on the Speaker or the Chairman. The purpose of the enactment of paragraph 7, as the debates in the Houses indicate, was to bar the jurisdiction of the Courts under articles 136, 226 and 227 of the Constitution of India. Thus it was held that this contention would go against all these overwhelming interpretative criteria apart from its unacceptability on the express language of Paragraph 7.

It was urged that no question of change in articles 136, 226 and 227 of the Constitution within the meaning of clause (b) of the proviso to article 368(2) arises at all in view of the fact that the area of these rights and obligations being constitutionally rendered non-judiciable, there is no judicial review under articles 136, 226 and 227 at all in the first instance so as, to admit of any idea of its exclusion.\(^{582}\)

In the present cases, though the amendment does not bring in any change directly in the language of articles 136, 226 and 227 of the Constitution, however, in effect paragraph 7 curtails the operation of those articles respecting matters falling under the Tenth Schedule. There is a change in the effect in articles 136, 226 and 227 within the meaning of clause (b) of the proviso to article 368(2). Paragraph 7,

\(^{582}\) Relied upon: Sankari Prasad Singh Deo V. Union of India, (1952) I SCR 89 and Sajjan Singh V. State of Rajasthan, (1965) I SCR 933.
therefore, attracts the proviso and ratification was necessary. For reasons stated above on Point B, the Supreme Court held: “That having regard to the background and evolution of the principles underlying the Constitution (52nd Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule in the Constitution of India, the provisions of Paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effect of articles 136, 226 and 227 of the Constitution of India and, therefore, the amendment would require to be ratified in accordance with the proviso to sub-article (2) of article 368 of the Constitution of India.”

(v) Finality of the decision of the Speaker/ Chairman

In Kihota Hollohon Case, the issue was whether paragraph 6 of the Tenth Schedule granting finality to the decision of the Speaker/ Chairman is valid. The Court said: “To the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the Speakers/ Chairmen.” These two issues were over-lapping and here dealt with together. Paragraph 6(1) of the Tenth Schedule seeks to impart a statutory finality to the decision of the Speaker or the Chairman. The argument is that, the concept of ‘finality’ by itself, excludes Courts’ jurisdiction. The issue was whether the word ‘final’ renders the decision of the Speaker immune from Judicial Review when it is well-accepted that a finality clause is not a legislative magical incantation which has that effect of telling off Judicial Review. Statutory finality of a decision presupposes and is subject to its consonance with the statute.

The court placed reliance on the following passages from Prof. Wade on ‘Administrative Law’ which on the meaning and effect of such finality clause says: “Many statutes provide that some decision shall be final. That provision is a bar to any appeal. But the courts refuse to allow it to hamper the operation of judicial review. As will be seen in this and the following sections, there is a firm judicial policy against allowing the rule of law to be undermined by weakening the powers of the court. Statutory restrictions on judicial remedies are given the narrowest possible construction, sometimes even against the plain meaning of the words. This is a sound policy, since otherwise administrative authorities and tribunals would be given

583 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
584 6th Edn., at page 720
uncontrollable power and could violate the law at will. ‘Finality is a good thing but justice is a better... If a statute says that the decision ‘be final’ or shall be final and conclusive to all intent’ and purposes’ this is held to mean merely that there is no appeal: judicial control of legality is unimpaired. Parliament only gives the impress of finality to the decisions of the tribunal on condition that they are reached in accordance with the law. This has been the consistent doctrine for three hundred years. (Emphasis added)

In Durga Shankar Mehta v. Raghuraj Singh\(^\text{585}\), the order of the Election Tribunal was made final and conclusive by section 105 of the Representation of the People Act, 1951. The contention was that the finality and conclusiveness clauses barred the jurisdiction of the Supreme Court under article 136. This contention was repelled. It was observed: “but once it is held that it is a judicial tribunal empowered and obliged to deal judicially with disputes arising out of or in connection with election, the overriding power of this Court to grant special leave, in proper cases, would certainly be attracted and this power, cannot be excluded by any parliamentary legislation... But once that Tribunal has made any determination or adjudication on the matter, the powers of this Court to interfere by way of special leave can always be exercised... The powers given by article 136 of the Constitution, however, are in the nature of special or residuary powers which are exerciseable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land... Section 105 of the Representation of the People Act certainly gives finality to the decision of the Election Tribunal so far as that Act is concerned and does not provide for any further appeal but that cannot in any way cut down or affect the overriding powers which this Court can exercise in the matter of granting special leave under article 136 of the Constitution.”

Thereafter in Union of India v. Jyoti Prakash Mitter\(^\text{586}\), when a similar finality clause in article 217(3) of the Constitution came up for consideration, this Court said: “The President acting under article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the rules of natural justice were not observed, or

\(^{585}\) (1955) 1 SCR 267
\(^{586}\) (1971) 1 SCC 396
that the President’s judgment was coloured by the advice or representation made by the executive or it was founded on no evidence”

Referring to the expression “final” occurring in article 311(3) of the Constitution this Court in Union of India v. Tulsiram Patel\(^{587}\), held: The finality given by clause (3) of article 311 to the disciplinary authority’s decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b).

If the intendment is to exclude the jurisdiction of the superior Courts the language would quite obviously have been different. Even so where such exclusion is sought to be effected by an amendment the further question whether such an amendment would be destructive of a basic feature of the Constitution would arise. But comparison of the language in article 363(1) would bring out in contrast the kind of language that may be necessary to achieve any such purpose. In Brundaban Nayak v Election Commission of India\(^{588}\), in spite of finality attached by article 192 to the decision of the Governor in respect of disqualification incurred by a member of a State Legislature subsequent to the election, the matter was examined by this Court on an appeal by special leave under article 136 of the Constitution against the decision of the High Court dismissing the writ petition filed under article 226 of the Constitution. Similarly in Union of India v. Jyoti Prakash Mitter\(^{589}\), in spite of finality attached to the order of the President with regard to the determination of age of a Judge of the High Court under article 217(3) of the Constitution, this Court examined the legality of the order passed by the President during the pendency of an appeal filed under article 136 of the Constitution. There is authority against the acceptability of the argument that the word “final” occurring in paragraph 6(1) has the effect of excluding the jurisdiction of the Courts in articles 136, 226 and 227.

\(^{587}\) (1985) 3 SCC398; (1985) Supp 2 5CR 131
\(^{588}\) AIR 1965 SC 1892; (1965) 3 5CR 53
\(^{589}\) Supra 586
The Constitution Bench observed that the cognate questions are whether a dispute of the kind envisaged by paragraph 6 of the Tenth Schedule is in a non-judicial area and that, at all events, the fiction in paragraph 6(2) that all proceedings under paragraph 6 of the Tenth Schedule be deemed to be “proceedings in Parliament” or “Proceedings in the Legislature of a State” attracts immunity from the scrutiny by Courts as under article 122 or 212 as the case may be. The court found it useful to recall the following observations of Gajendragadkar J., on the scope of article 194(3) of the Constitution, which is analogous to article 105(3) in Special Reference No. 1 of 1964\(^{590}\): “This clause requires that the powers, privileges and immunities which are claimed by the House must be shown to have subsisted at the commencement of the Constitution, i.e., on January 26, 1950. It is well-known that out of a large number of privileges and powers which the House of Commons claimed during the days of its bitter struggle for recognition, some were given up in course of time, and some virtually faded out by desuetude; and so, in every case where a power is claimed, it is necessary to enquire whether it was an existing power at the relevant time. It must also appear that the said power was not only claimed by the House of Commons, but was recognised by the English Courts. It would obviously be idle to contend that a particular power which is claimed by the House was claimed by the House of Commons but was not recognised by the English Courts, it would still be upheld under the latter part of clause (3) only on the ground that it was in fact claimed by the House of Commons. In other words, the inquiry which is prescribed by this clause is: is the power in question shown or proved to have subsisted in the House of Commons at the relevant time?

In Indira Nehru Gandhi v. Raj Narain\(^{591}\), Beg J., referring to the historical background relating to the resolution of electoral disputes by the House of Commons said: “I do not think that it is possible to contend, by resorting to some concept of a succession to the powers of the medieval “High Court of Parliament” in England, that a judicial power also devolved upon our Parliament through the Constituent Assembly, mentioned in section 8 of the Indian Independence Act of 1947. As already indicated by me, the Constituent Assembly was invested with law making and not judicial powers. Whatever judicial power may have been possessed once by English kings, sitting in Parliament, constituting the highest Court of the realm in medieval

\(^{590}\) (1965) 1 SCR 413
\(^{591}\) AIR 1975 SC 2299; 1975 (Supp) 5CC 1; (1976) 2 SCR 347
England, have devolved solely on the House of Lords as the final court of appeal in England. “King in Parliament” had ceased to exercise judicial powers in any other way long before 1950. And, the House of Commons had certainly not exercised a judicial power as a successor to the one time jurisdiction of the “King in Parliament” with the possible exception of the power to punish for its contempts.

I think, at the time our Constitution was framed, the decision of an election dispute had ceased to be a privilege of the House of Commons in England and therefore, under article 105(3), it could not be a privilege of Parliament in this country.

Indeed, in dealing with the disqualifications and the resolution of disputes relating to them under articles 191 and 192 or articles 102 and 103, as the case may be, the Constitution has evinced a clear intention to resolve electoral- disputes by resort to the judicial power of the State. Indeed, Justice Khanna in Indira Nehru Gandhi’s case said:

“Not much argument is needed to show that unless there be a machinery for resolving an election dispute and for going into the allegations that elections were not free and fair being vitiated by malpractices, the provision that a candidate should not resort to malpractices would be in the nature of a mere pious wish without any legal sanction. It is further plain that f the validity of the election declared to be valid only f we provide a forum for going into those grounds and prescribe a law for adjudicating upon those grounds....

It is, therefore, inappropriate to claim that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule is not a judicial power and is within the non-justiciable legislative area. The court further relied upon the classic exposition of Justice Issacs j., in Australian Boot Trade Employees’ Federation v. Whybrow & Co\(^{592}\), as to what distinguishes a judicial power from a legislative power was referred to with the approval of this Court in Express Newspaper Ltd. v. Union of India\(^{593}\), Issacs J., stated:

“If the dispute is as to the relative rights of parties as they rest on past or present circumstances, the award is in the nature of a judgment, which might have been the decree of an ordinary judicial tribunal acting under the ordinary judicial power. There the law applicable to the case must be observed. If, however, the dispute

\(^{592}\) (1910) 10 CLR 266
\(^{593}\) AIR 1958 SC 578
is as to what shall in the future be the mutual rights and responsibilities of the parties—
in other words, if no present rights are asserted or denied, but a future rule of conduct
is to be prescribed, thus creating new rights and obligations, with sanctions for non-
conformity then the determination that so prescribes, call it an award, or arbitration,
determination, or decision or what you will, is essentially of a legislative character,
and limited only by the law which authorises it. If again, there are neither present
rights asserted, nor a future rule of conduct prescribed, but merely a fact ascertained
necessary for the practical effectuation of admitted rights, the proceeding, though
called an arbitration, is rather in the nature of an appraisement or ministerial act.

In the present case, the power to decide disputed disqualification under
paragraph 6(1) is preeminently of a judicial complexion. The fiction in paragraph
6(2), indeed, places it in the first clause of article 122 or 212, as the case may be. The
words “proceedings in Parliament” or “proceedings in the legislature of a State” in
paragraph 6(2) have their corresponding expression in articles 122(1) and 212(1)
respectively. This attracts an immunity from mere irregularities of procedures.

That apart, even after 1986 when the Tenth Schedule was introduced, the
Constitution did not evince any intention to invoke article 122 or 212 in the conduct
of resolution of disputes as to the disqualification of members under articles 191(1)
and 102(1). The very deeming provision implies that the proceedings of
disqualification are, in fact, not before the House; but only before the Speaker as a
specially designated authority. The decision under paragraph 6(1) is not the decision
of the House, nor is it subject to the approval by the House. The decision operates
independently of the House. A deeming provision cannot by its creation transcend its
own power. There is, therefore, no immunity under articles 122 and 212 from judicial
scrutiny of the decision of the Speaker or Chairman exercising power under paragraph
6(1) of the Tenth Schedule.

The next question dealt by the Supreme Court was—‘then is the Speaker or the
Chairman acting under paragraph 6(1) a Tribunal? Bearing in mind that all tribunals
are not courts, though all Courts are Tribunals. The word ‘Courts’ is used to designate
those Tribunals which are set up in an organised State for the Administration of
Justice. By Administration of Justice is meant the exercise of judicial power of the
State to maintain and uphold rights and to punish ‘wrongs’. Whenever there is an
infringement of a right or an injury, the Courts are there to restore the vinculum juris,
which is disturbed. For this the Supreme Court placed reliance upon Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala\textsuperscript{594}. Therein Hidayatullah, J. had said\textsuperscript{595}:

"By "courts" is meant courts of civil judicature and by "tribunals", those bodies of men who are appointed to decide controversies arising under certain special laws. Among the powers of the State is included the power to decide such controversies. This is undoubtedly one of the attributes of the State and is aptly called the judicial power of the State. In the exercise of this power, a clear division is thus noticeable. Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different. What distinguishes them has never been successfully established. Lord Stamp said that the real distinction is that the courts have "an air of detachment". But this is more a matter of age and tradition and is not of the essence. Many tribunals, in recent years, have acquitted themselves so well and with such detachment as to make this test insufficient."

The court went on to conclude that by these well-known and accepted tests of what constitutes a Tribunal, the Speaker or the Chairman, acting under paragraph 6(1) of the Tenth Schedule is a Tribunal.

The court in its conclusion pronounced on 12th November, 1991 had indicated in clauses C and H therein that judicial review in the area is limited in the manner indicated. Now, the court answered - why, despite the adjudicatory authority being a tribunal should the scope of judicial review be so limited? The court held that the finality clause in paragraph 6 does not completely exclude the jurisdiction of the courts under articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the courts is that in spite of a finality clause it is open to the court to examine whether the action of the authority under challenge is ultra vires the powers conferred on the said authority. Such an action can be ultra vires for the reason that it is in contravention of a mandatory provision of the law conferring on the authority the power to take such an action. It will also be ultra vires the powers conferred on the authority if it is vitiated by malafides or is colourable exercise of power based on extraneous and irrelevant considerations. The court further observed that while exercising their certiorari jurisdiction, the courts have applied the test whether the impugned action falls within

\textsuperscript{594} (1962) 2 SCR 339
\textsuperscript{595} (1962) 2 SCR 339 (362)
the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore does oust certiorari to some extent and it will be effective in ousting the power of the court to review the decision of an inferior tribunal by certiorari if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not effect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice.\(^\text{596}\)

The court also relied upon Makhan Singh v State of Punjab\(^\text{597}\), and on State of Rajasthan v Union of India\(^\text{598}\). In the latter case decided by a seven-judge bench, the Court was considering the challenge to the validity of a proclamation issued by the President of India under article 356 of the Constitution At the relevant time under clause (5) of article 356, the satisfaction of the President mentioned in clause (1) was final and conclusive and it could not be questioned in any court on any ground. All the learned judges have expressed the view that the proclamation could be open to challenge if it was vitiated by mala fides. While taking this view, some of the learned judges have made express reference to the provisions of clause (5). In this context, Bhagwati, J had held\(^\text{599}\):  

"Of course by reason of clause (5) of article 356, the satisfaction of the President is final and conclusive and cannot be assailed on any ground but this immunity from attack cannot apply where the challenge is not that the satisfaction is improper or unjustified, but that there is no satisfaction at all. In such a case it is not the satisfaction arrived at by the President which is challenged, but the existence of the satisfaction itself. Take, for example, a case where the President gives the reason for taking action under article 356, clause (1) and says that he is doing so, because the Chief Minister of the State is below five feet in height and, therefore, in his opinion a  


\(^\text{597}\) 1964 Cr LJ 217

\(^\text{598}\) (1978) 1 SCR 1

\(^\text{599}\) State of Rajasthan V. Union of India, AIR 1977 SC 1361; (1978) 1 SCR 1 (82-83)
situation has arisen where the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Can the so-called satisfaction of the President in such a case not be challenged on the ground that it is absurd or perverse or mala fide or based on a wholly extraneous and irrelevant ground and is, therefore, no satisfaction at all. The court then referred again to Union of India v. Jyoti Prakash Mitter (supra), wherein dealing with the decision of the President under article 217(3) on the question as to the age of a judge of the High Court, requiring a judicial approach it was held that the field of judicial review was enlarged to cover violation of rules of natural justice as well as an order based on no evidence because such errors are errors of jurisdiction. Also, in Union of India v. Tulsiram Patel (supra) the Supreme Court was dealing with article 311(3) of the Constitution which attaches finality to the order of the disciplinary authority on the question whether it was reasonably practicable to hold an inquiry. It was observed that though the ‘finality’ clause did not bar jurisdiction it did indicate that the jurisdiction is limited to certain grades.

In the light of the decisions referred to above and the nature of function that is exercised by the Speaker/Chairman under paragraph 6, the scope of judicial review under articles 136,226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 would be confined to jurisdictional errors only viz., infirmities based on violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.

In view of the limited scope of judicial review that is available on account of the finality clause in paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power i.e., Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequence.

For the aforementioned reasons the Supreme Court held on contentions E and F: "That the Tenth Schedule does not, in providing for an additional grant for disqualification and for adjudication of disputed disqualification seek to create a non-
justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in Paragraph 6(1) does not detract from or abrogate judicial review under articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, mala fides, non compliance with rules of Natural Justice and perversity, are concerned.

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh’s case ⁶⁰⁰ to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words “be deemed to be proceedings in Parliament” or, “proceedings in the Legislature of a State” confines the scope of the fiction accordingly. The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

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

The court did not feel the need to deal with this issue and said: “In the view we take of the validity of paragraph 7 it is unnecessary to pronounce on the contention whether judicial review is a basic feature of the Constitution and paragraph 7 of the Tenth Schedule violates such basic structure.”

(vi) Review of the Decision of the Speaker/Chairman

In Dr. Kashinath G Jhalmi Case ⁶⁰¹ the issue was whether a Speaker can review his own decision to disqualify a member under the Tenth Schedule. The Court said: “The Speaker of a House does not have the power to review his own decisions

⁶⁰⁰ Spi. Ref No. 1, 1965 (1) SCR 413
⁶⁰¹ Dr. Kashinath G Jhalmi V. Speaker, Goa Legislative Assembly (1993) 2 SCC 703
to disqualify a candidate. Such power is not provided for under the Schedule, and is not implicit in the provisions either.”

(vii) **Whether Speaker Bound By Court Direction**

In *Ravi S Naik Case* the issue was whether the Speaker of a legislature is bound by the directions of a Court. The Court cited the case of *Kihota Hollohon Case* where it had been said that the “*Speaker while passing an order under the Tenth Schedule functions as a Tribunal. The order passed by him would therefore be subject to judicial review.*”

(vii) **Judicial Review & 10th Schedule Rules**

In *Ravi S Naik Case* the issue was whether judicial review by courts extends to rules framed under the Tenth Schedule. The Court said: “*Rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity. Procedural irregularity is immune from judicial scrutiny.*”

(viii) **Judicial Review & Speaker’s Decision Making Process**

In *Rajendra Singh Rana Case* the issue was when can a court review the Speaker’s decision making process under the Tenth Schedule? The Court said: “*If the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. The Court said that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.*”

(ix) **Analysis of Provisions of Tenth Schedule**

The Constitution (Fifty-second Amendment) Act, 1985 popularly known as the anti-defection law came into force w.e.f. 1 March 1985. It amended articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures and added a new schedule *i.e.* the Tenth Schedule to the Constitution setting out certain provisions as to disqualification on ground of defection. In articles 102/191, a new clause (2) has been inserted which reads as follows: “*a person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.*”

602 Ravi S Naik V. Union of India AIR 1994 SC 1558.
603 Kihota Hollohon V. Zachillhu and Others AIR 1993 SC412.
605 Rajendra Singh Rana and Ors. V. Swami Prasad Maurya and Ors. (2007) 4 SCC 270
Para 2-Disqualifications

The section that would verily form the crux of this legislation is paragraph 2 that gives the circumstances when a member would incur disqualification from the House. This para would be dealt with in detail under this article, primarily for two reasons- one, that it forms the quintessence of this law and hence, a comprehensive understanding of this provision is crucial and two, because the judiciary has been called upon a number of times to interpret its provisions and it has therefore shed some light on the manner in which these provisions should be construed.

Therefore, we see that the above para sets out when a member would incur a disqualification (under para 2 (1) (a) and (b)). The provision seems to be fairly clear when it provides two cases wherein the disqualification would apply- first, when there is a voluntarily giving up of seat by the member and second, when he votes (or abstains from voting) contrary to the directive issued by the party. Now, two important questions arise in this regard-

(i) What would constitute ‘voluntarily giving up of seat’?
(ii) What is the full import of 2 (1) (b) wherein voting/abstention from voting against the party?

At the first instance, the phrase ‘voluntarily giving up of seat’ sounds pretty straightforward. It is giving up of the seat in the House by one’s own will. However, the Courts have given certain pointers on its interpretation. In Ravi S Naik Case, the Supreme Court says, “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 party even though he has not rendered 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”.

Referring to these words, in Rajendra Singh Rana Case, the Supreme Court held that the act of giving a letter requesting the Governor to call upon the leader of the other side to form a Government, itself would amount to an act of voluntarily giving up the membership of the party on whose ticket the said members had got elected. In this case, in the 2002 Assembly elections in the State of Uttar Pradesh, a

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606 Ravi S Naik V. Union of India AIR 1994 SC 1558.
607 Rajendra Singh Rana and Ors. V. Swami Prasad Maurya and Ors. (2007) 4 SCC 270
coalition government was formed since none of the parties secured a majority. In the middle of 2003, a unanimous decision was taken by the Cabinet to dissolve the Assembly. After the Cabinet’s decision and before the resignation of the leader of the coalition Government (then, Mrs. Mayawati, belonging to the Bahujan Samaj Party [BSP]), thirteen members from the BSP met the Governor and requested him to invite the leader of the opposite party (then, the Samajwadi Party [SP]) to form the Government. It was in this context that the Court held the above.

(b) **Para 2- Constitutional validity**

The constitutional validity of paragraph 2, especially the clause providing that the member would incur a disqualification if he votes/abstains from voting against the party directions, has been challenged. The Supreme Court has analyzed this point in detail in *Kihota Hollohon Case*. Explaining its position, the court said, “there are certain side effects and fall out which might affect and hurt even honest dissenters and conscientious objectors, but these are the usual plus and minus of all areas of experimental legislation. In these areas, the distinction between what is constitutionally permissible and what is outside it is marked by a ‘hazy gray line’ and it is the Court’s duty to identify, ‘darken and deepen’ the demarcating line of constitutionality...”

Holding that the provisions of the Tenth Schedule are perfectly valid, the Court went on to say, “[T]hat the Paragraph 2 of the Tenth Schedule of the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected members of the Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended. The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 195 of the Constitution.”

Other provisions regarding disqualifications under this head are contained in paragraph 3 (that was deleted by the 2004 Amendment to the Constitution), which provided for a case wherein a split takes place in the party. A number of cases have been decided on this subject. Paragraph 4 dealt with a disqualification in cases of merger whereas paragraph 5 sets out certain exemptions in favour of the Speaker or the Chairman of the Houses of Legislature.

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608 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
(c) **Other provisions of Tenth Schedule**

Having set out what would entail a disqualification from the House, the Schedule now goes on to clarify, in paragraph 6, who the deciding authority would be in case a question regarding the incurrence of a disqualification. It says that any such question would be decided by the Speaker or the Chairman of the House and his decision in this regard would be final. An interesting question that the Court was called upon to decide with regard to this provision was whether the proceeding before the Speaker in the nature of a judicial one, and whether the office of a Speaker in this regard could be termed as a Tribunal? Answering both the questions in the affirmative the court said, "It is therefore inappropriate to claim that the determinative jurisdiction of the Speaker of the Chairman in the tenth Schedule is not a judicial power and is within the non-justiciable legislative area."

Speaking about how the Speaker’s authority could be a Tribunal, the Court elaborated thus, "Where there is a lis -an affirmation by one party and denial by another-and the dispute necessarily involves a decision on the rights and obligations of the parties to it and the authority is called upon to decide it, there is an exercise of judicial power. That authority is called a Tribunal, if it does not have all the trappings of a Court." In this instant case, the Court has taken recourse to many previous judgments and commentaries to explain this point.

In *Mannadi Satyanarayan Reddy v Andhra Pradesh Legislative Assembly and Ors*, the Andhra Pradesh High Court had to decide, inter alia, the question of whether the Speaker, while exercising jurisdiction, can decide whether or not a Legislator belongs to a particular Legislature party. Holding that a Speaker could indeed decide thus, the Court said that if, in deciding the question of a member’s disqualification depended upon an answer to which political party had set such member up and whether or not he belonged to such party, he should be allowed to decide such question. In the words of the Court, "there is nothing in paragraphs 1, 2, and 6 of the Tenth Schedule which fetters exercise of jurisdiction by the Speaker to decide this question."

Paragraph 7 of the Schedule bars the jurisdiction of courts in any matter connection with the disqualification of a member of House under this Schedule. Of
course, this does not exclude Court’s intervention under articles 32, 226, 227, 136 under the Constitution. This position was made very clear by the Supreme Court in *Kihota Hollohon Case* 609. Citing various authorities, the court analyzed the meaning of the word ‘final’ in the context of such clauses and said, “*There is authority against the acceptability of the arguments that the word ‘final’ occurring in paragraph 6 (1) has the effect of excluding the jurisdiction of the courts in articles 136, 226, 227.*”

The final provision in this legislation gives the Speakers of the House to make rules for giving effect to any provision contained in the Schedule. In pursuance of this power, the states of Goa, Maharashtra, Gujarat, Haryana, Bihar, Kerala, Karnataka and others and also the Houses of the Parliament, both the Rajya Sabha and Lok Sabha have made rules in this regard. These Houses would be bound by the rules contained in the Schedules as also the ones that have been enacted specially for them.

(x) **Scope of Anti-Defection Law**

The scope of this anti-defection law was examined in detail in *Kihota Hollohon Case* 610, a case that also analyzed various other aspects of this legislation also.

(a) **Necessity of An Anti-Defection Legislation**

Here, the court, speaking about the necessity of an anti-defection legislation, said, “*The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed to disqualify the members of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule.*”

(b) **Facts of Kihota Hollohon Case**

On 12 December 1990, Shri Kihota Hollohon, MLA, Nagaland Legislative Assembly gave five petitions under the Tenth Schedule to the Constitution against Sarvashri Konngam, Khusatho, T.Miachieo, L. Mekiye Sema and Zachilhu, MLAs for having voluntarily given up membership of their original political party viz Congress (I). The petitioner submitted that aforesaid members had resigned individually for

609 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
610 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
causing a split in the Congress (I) Party and they did not constitute the one-third of the existing strength of Congress(I) MLAs in the The Indian Scenario 821 louse, which was 24. After taking into consideration the facts, circumstances of the case, relevant law and rules Shri Themacho, Speaker, Nagaland Legislative Assembly in his decision, under the Tenth Schedule held as follows: “It is clear from the declaration, which is uncontroverted, that they had decided to voluntarily give up their membership of the original political party namely, the Congress (I) Party. Moreover, the plea they have taken is not inconsistent with the plea set up in the petition. Furthermore, 5 members do not constitute one-third of the original political party which had a strength of 24 in the Nagaland Assembly. I, therefore, accept the declaration signed by the aforesaid MLAs to be true and accordingly the statements made in the said petition being uncontroverted are taken as true and correct”. The said five members were accordingly disqualified from the membership of the Nagaland Legislative Assembly by the Speaker.

The decision of the Speaker, Nagaland Legislative Assembly was challenged by way of a writ petition by Shri Zachilhu & other members who had been disqualified, in the High Court of Guwahati. Among other things, the constitutional validity of the Tenth Schedule to the Constitution introduced by the Constitution (Fifty-second Amendment) Act, 1985 was also challenged. Around that time, in the wake of varied interpretation of the provisions of the Tenth Schedule by the Presiding Officers in their decisions under the Tenth Schedule, some of its provisions were challenged in various High Courts of the country as being illegal and unconstitutional. Petitions were also filed in different High Courts from time to time against the decisions taken by various Presiding Officers of different Legislatures under the Tenth Schedule to the Constitution. All such petitions were transferred by the Supreme Court of India to themselves, on the request of the Government of India, as important questions of law and Constitution were involved. The Supreme Court accordingly constituted a five-judge Constitution Bench to consider all these Writ Petitions, Transfer Petitions, Civil Appeals, Special Leave Petitions.
(xi) The Bill- Article 368 and Severability

In Kihota Hollohon Case\textsuperscript{611} the issue was in view of the admitted non-compliance with the proviso to article 368(2) not only paragraph 7 of the Tenth Schedule, but also the entire Bill resulting in the Constitution (Fifty-second Amendment) Act, 1985, stands vitiated and the purported amendment is abortive and (does not in law bring about a valid amendment. Or whether, the effect of such non-compliance invalidates paragraph 7 alone and the other provisions which, by themselves, do not attract the proviso do not become invalid.

That even if the effect of non-ratification by the Legislature of the States is to invalidate paragraph 7 alone, the whole of the Tenth Schedule fails for non-severability. Doctrine of severability, as applied to ordinary statutes to promote their constitutionality, is inapplicable to constitutional amendments. Even otherwise, having regard to legislative intent and scheme of the Tenth Schedule, the other provisions of the Tenth Schedule, after the severance and excision of paragraph 7, become truncated, and unworkable and cannot stand and operate independently. The Legislature would not have enacted the Tenth Schedule without paragraph 7 which forms its heart and core.

The Supreme Court observed that the criterion for determining the validity of a law is the competence of the law-making authority. The competence of the law-making authority would depend on the ambit of the legislative power, and the limitations imposed thereon as also the limitations on mode of exercise of the power. Though the amending power in a Constitution is in the nature of a constituent power and differs in content from the legislative power, the limitations imposed on the constituent power may be substantive as well as procedural. Substantive limitations are those which restrict the field of exercise of the amending power and exclude some areas from its ambit. Procedural limitations are those which impose restrictions with regard to the mode of exercise of the amending power. Both these limitations, however, touch and affect the constituent power itself, disregard of which invalidates its exercise.

\footnote{Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.}
The Constitution provides for amendment in articles 4, 169,368, paragraph 7 of Fifth Schedule and paragraph 21 of Sixth Schedule. Article 4 makes provisions for amendment of the First and the Fourth Schedules, article 169 provides for amendment in the provision of the Constitution which may be necessary for abolition or creation of Legislative Councils in States, paragraph 7 of the Fifth Schedule provides for amendment of the Fifth Schedule and paragraph 21 of the Sixth Schedule provides for amendment of the Sixth Schedule. All these provisions prescribe that the said amendments can be made by a law made by Parliament which can be passed like any other law by a simple majority in the Houses of Parliament. Article 368 confers the power to amend the rest of the provisions of the Constitution. In sub-article (2) of article 368, a special majority - two-thirds of the members of each House of Parliament present and voting and majority of total membership of such House - is required to effectuate the amendments. The proviso to sub-article (2) of article 368 imposes a further requirement that if any change in the provisions set out in clauses (a) to (e) of the proviso, is intended it would then be necessary that the amendment be ratified by the legislature of not less than one-half of the States.

Although there is no specific enumerated substantive limitation on the power in article 368, but as arising from very limitation in the word 'amend, a substantive limitation on the amending power so that the amendment does not alter the basic structure or destroy the basic features of the Constitution. The amending power under article 368 is subject to the substantive limitation in that the basic structure cannot be altered or the basic features of the Constitution destroyed. The limitation requiring a special majority is a procedural one. Both these limitations impose a fetter on the competence of Parliament to amend the Constitution and any amendment made in disregard of these limitations would go beyond the amending power.

While examining the constitutional validity of laws the principle that is applied is that if it is possible to construe a statute so that its validity can be sustained against a constitutional attack it should be so construed and that when part of a statute
is valid and part is void the valid part must be separated from the valid part This is
done by applying the doctrine of severability.612

The doctrine of severability has been applied by this Court in cases of
challenge to the validity of an amendment on the ground of disregard to the 3
substantive limitations on the amending power, namely, alteration of the basic
structure. But only the offending part of the amendment which had the effect of
altering the basic structure was struck down while the rest of the amendment was
upheld.613

The court went on to ask ‘Is there anything in the procedural limitations
imposed by sub-article (2) of article 368 which excludes the doctrine of severability in
respect of a law which violates the said limitations?’ Answering this the court
observed that such a violation may arise when there is a composite Bill or what is in
statutory context or jargon called a ‘Rag-Bag’ measure seeking amendments to
several statutes under one amending measure which seeks to amend various
provisions of the Constitution some of which may attract clauses (a) to (e) of the
proviso to article 368(2) and the Bill, though passed by the requisite majority in both
the Houses of Parliament has received the assent of the President without it being sent
to States for ratification or having been so sent fails to receive such ratification from
not less than, half the States before the Bill is presented for assent. Such an
Amendment Act is within the competence of Parliament insofar as it relates to
provisions other than those mentioned in clauses (a) to (e) of proviso to article 368(2)
but in respect of the amendments introduced in provisions referred to in clauses (a) to
(e) of proviso to article 368(2), Parliament alone is not competent to make such
amendments on account of some constitutionally recognised federal principle being
invoked. If the doctrine of severability can be applied it can be upheld as valid in
respect of the amendments within the competence of Parliament and only the
amendments which Parliament alone was not competent to make could be declared
invalid.

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612 Cooley s Constitutional Limitations 8th Edn, Vol I, pp 359-360, R M D 4
Chamarbaugwalla V. Union of India (1957) 1 SCR 930.
613 See: Keshavananda Bharti Sripadagalavaru V. State of Kerala, (1973) 4 SCC 225;
Further the court asked - 'Is there anything compelling in the proviso to article 368(2) requiring it to be construed as excluding the doctrine of severability to such an amendment'? The court held that it is settled rule of statutory construction that "the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case" and that where "the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the, interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms". 614

The Supreme Court further held that the proviso to article 368(2) appears to have been introduced with a view to giving effect to the federal principle, hi the matter of amendment of provisions specified in clauses (a) to (e) relating to legislative and executive powers of the States vis-a-vis the Union, the Judiciary, the election of the President and the amending power itself, which have a bearing on the States, the proviso imposes an additional requirement of ratification of the amendment which seeks to effect a change in those provisions before the Bill is presented for the assent of the President. It is salutary that the scope of the proviso is confined to the limits prescribed therein and is not construed so as to take away the power in the main part of article 368(2). An amendment which otherwise fulfils the requirements of article 368(2) and is outside the specified cases which require ratification cannot be denied legitimacy on the ground alone of the company it keeps. The main part of article 368(2) directs that when a Bill which has been passed by the requisite special majority by both the Houses has received the assent of the President "the Constitution shall stand amended in accordance with the terms of the Bill". The proviso cannot have the effect of interdicting this constitutional declaration and mandate to mean that in a case where the proviso has not been complied even the amendments which do not fall within the ambit of the proviso also become abortive. The words "the amendment shall also require to be ratified by the legislature" indicate that what is required to be ratified by the legislatures of the States is the amendment seeking to make the change.

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614 Relied upon: Madras & Southern Mahratta Railway Co. v. Bezwada Municipality, (1944) 71 IA 113; Commissioner of Income-Tax, Mysore v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256

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in the provisions referred to in clauses (a) to (e) of the proviso. The need for and the requirement of the ratification is confined to that particular amendment alone and not in respect of amendments outside the ambit of the proviso. The proviso can have, therefore, no bearing on the validity of the amendments which do not fall within its ambit.

During the arguments reliance was placed on the words "before the Bill making provision for such amendment is presented to the President for assent" to sustain the argument that these words imply that the ratification of the Bill by not less than one-half of the States is a condition-precedent for the presentation of the Bill for the assent of the President. It is further argued that a Bill which seeks to make a change in the provisions referred to in clauses (a) to (e) of the proviso cannot be presented before the President for his assent without such ratification and if assent is given by the President in the absence of such ratification, the amending Act would be void and ineffective in its entirety.

A similar situation can arise in the context of the main part of article 368(2) which provides: "when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the Members of that House present and voting, it shall be presented to the President". Here also a condition is imposed that the Bill shall be presented to the President for his assent only after it has been passed in each House by the prescribed special majority. An amendment in the First and Fourth Schedules referable to article 4 can be introduced by Parliament by an ordinary law passed by simple majority. There may be a Bill which may contain amendments made in the First and Fourth Schedules as well as amendments in other provisions of the Constitution excluding those referred to in the proviso which can be amended only by a special majority under article 368(2) and the Bill after having been passed only by an ordinary majority instead of a special majority has received the assent of the President. The amendments which are made in the First and Fourth Schedules by the said amendment Act were validly made in view of article 4 but the amendments in other provisions were in disregard to article 368(2) which requires a special majority. Is not the doctrine of severability applicable to such an amendment so that amendments made in the First and Fourth Schedules may be
upheld while declaring the amendments in the other provisions as ineffective? A contrary view excluding the doctrine of severability would result in elevating a procedural limitation on the amending power to a level higher than the substantive limitations.

Strong reliance was placed upon Bribery Commissioner v. Pedrick Ranasinghe\textsuperscript{615} wherein the Judicial Committee has had to deal with a somewhat similar situation. This was a case from Ceylon under the Ceylon (Constitution) Order of 1946. Clause (4) of section 29 of the said order in Council contained the amending power.

In that case, it was found that section 41 of the Bribery Amendment Act, 1958 made a provision for appointment of a panel by the Governor-General on the advice of the Minister of Justice for selecting members of the Bribery Tribunal while section 55 of the Constitution vested the appointment, transfer, dismissal and disciplinary control of judicial officers in the Judicial Service Commission. It was held that the legislature had purported to pass a law which, being in conflict with section 55 of the Order in Council, must be treated, if it is to be valid, as an implied alteration of the (Constitutional provisions about the appointment of judicial officers and could only be made by laws which comply with the special legislative procedure laid down in section 29(4). Since there was nothing to show that the Bribery Amendment Act, 1951 was passed by the necessary two-thirds majority, it was held that “any Bill which does not comply with the condition precedent of the proviso, is and remains, even though it receives the Royal Assent, invalid and ultra vires”. Applying the doctrine of severability the Judicial Committee, however, struck down the offending provision, i.e., section 41 alone. In other words passing of the Bill by a special majority was the condition precedent for presentation of the Bill for the assent. Disregard of such a condition precedent for presenting a Bill for assent did not result in the entire enactment being vitiated and the law being declared invalid in its entirety but it only had the effect of invalidation of a particular provision which offended against the limitation on the amending power. A comparison of the language used in clause (4) of section 29 with that of article 368(2) would show that both the

\textsuperscript{615} 1956 AC 172
provisions bear a general similarity of purpose and both the provisions require the passing of the Bill by special majority before it was presented for assent.

It was held relying upon the abovementioned case that the same principle would, therefore, apply while considering the validity of a composite amendment which makes alterations in the First and Fourth Schedules as well as in other provisions of the Constitution requiring special majority under article 368(2) and such a law, even though passed by the simple majority and not by special majority, may be upheld in respect of the amendments made in the First and Fourth Schedules. There is really no difference in principle between the condition requiring passing of the Bill by a special majority before its presentation to the President for assent contained in article 368(2) and the condition for ratification of the amendment by the legislatures of not less than one-half of the States before the Bill is presented to the President for assent contained in the proviso. The principle of severability can be equally applied to a composite amendment which contains amendments in provisions which do not require ratification by States as well as amendment in provisions which require such ratification and by application of the doctrine of severability, the amendment can be upheld in respect of the amendments which do not require ratification and which are within the competence of Parliament alone. Only these amendments in provisions which require ratification under the proviso need to be struck down or declared invalid;

The test of severability requires the Court to ascertain whether the legislature would at all have enacted the law if the severed part was not the part of the law and whether after severance what survives can stand independently and is workable. If the provisions of the Tenth Schedule are considered in the background of the legislative history, namely, the report of the ‘Committee on Defections’ as well as the earlier Bills which were moved to curb the evil of defection it would be evident that the main purpose underlying the constitutional amendment and introduction of the Tenth Schedule is to curb the evil of defection which was causing immense mischief in our body-politic. The ouster of jurisdiction of Courts under paragraph 7 was incidental to and to lend strength to the main purpose which was to curb the evil of defection. It cannot be said that the constituent body would not have enacted the other provisions
in the Tenth Schedule if it had known that paragraph 7 was not valid. Nor can it be said that the rest of the provisions of the Tenth Schedule cannot stand on their own even if paragraph 7 is found to be unconstitutional. The provisions of paragraph 7 can, therefore, be held to be severable from the rest of the provisions.

For the abovementioned reasons the Supreme Court on Issues ‘C’ and ‘D’ held: “That there is nothing in the said proviso to article 368(2) which detracts from the severability of a provision on account of the inclusion of which the Bill containing the Amendment requires ratification from the rest of the provisions of such Bill which do not attract an& require such ratification. Having regard to the mandatory language of article 368(2) that “thereupon the Constitution shall stand amended” the operation of the proviso should not be extended to constitutional amendments in a Bill which can stand by themselves without such ratification.

That, accordingly, the Constitution (52nd Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule in the Constitution of India, to the extent of its provisions which are amenable to the legal-sovereign of the amending process of the Union Parliament cannot be overborne by the proviso which cannot operate in that area. There is no just for the view that even the rest of the provisions of the Constitution (52nd Amendment) Act, 1985, excluding Paragraph 7 of the Tenth Schedule become constitutionally infirm by reason alone of the fact that one of its severable provisions which attracted and required ratification under the proviso to article 368(2) was not so ratified. That Paragraph 7 of the Tenth Schedule contains a provision which is independent of, and stands apart from, the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of Paragraph 7 and are complete in themselves workable and are not truncated by the excision of Paragraph 7.
Review

The Courts of the land have been called upon to adjudicate upon and interpret almost all these provisions. Given the vicissitudes of Indian politics, the courts have taken defiant stands against acts of defection.

The issue whether the right to freedom of speech and expression is curtailed by the Tenth Schedule was taken up by Supreme Court in Kihota Hollohon Case. The court observed that: “The provisions do not subvert the democratic rights of elected members in Parliament and state legislatures. It does not violate their conscience. The provisions do not violate any right or freedom under Articles 105 and 194 of the Constitution.” In Ravi S Naik Case, the Supreme Court says, “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 party even though he has not rendered 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.

In G. Vishwanathan Case the issue was whether a member can be said to voluntarily give up his membership of a party if he joins another party after being expelled by his old political party. The court said: “Once a member is expelled, he is treated as an ‘unattached’ member in the house. However, he continues to be a member of the old party as per the Tenth Schedule. So if he joins a new party after being expelled, he can be said to have voluntarily given up membership of his old party.” In Kihota Hollohon Case, the issue was whether paragraph 7 of the Schedule barring the jurisdiction of courts in cases of disqualification is constitutional. The Court said: “The paragraph seeks to change the operation and effect of Articles 136, 226 and 227 of the Constitution which give the High Courts and Supreme Court jurisdiction in such cases. Any such provision is required to be ratified by state legislatures as per Article 368(2). The paragraph was therefore held invalid as it had not been ratified.”

616 Kihota Hollohon V. Zachillhu, 1992 Supple (2) SCC 65.
617 Ravi S Naik V. Union of India AIR 1994 SC 1558.
618 G. Vishwanathan V. Speaker, Tamil Nadu Legislative Assembly (1996) 2 SCC 353
619 Kihota Hollohon V. Zachillhu and Others AIR 1993 SC412.
In *Kihota Hollohon Case*. 620 the issue was whether paragraph 6 of the Tenth Schedule granting finality to the decision of the Speaker/Chairman is valid. The Court said: “To the extent that the provisions grant finality to the orders of the Speaker, the provision is valid. However, the High Courts and the Supreme Court can exercise judicial review under the Constitution. Judicial review should not cover any stage prior to the making of a decision by the Speakers/Chairmen.”

In *Dr. Kashinath G Jhalmi Case* 621 the issue was whether a Speaker can review his own decision to disqualify a member under the Tenth Schedule. The Court said: “The Speaker of a House does not have the power to review his own decisions to disqualify a candidate. Such power is not provided for under the Schedule, and is not implicit in the provisions either.

In *Ravi S Naik Case* 622 the issue was whether the Speaker of a legislature is bound by the directions of a Court. The Court cited the case of *Kihota Hollohon Case* 623 where it had been said that the “Speaker while passing an order under the Tenth Schedule functions as a Tribunal. The order passed by him would therefore be subject to judicial review.”

In *Ravi S Naik Case* 624 the issue was whether judicial review by courts extends to rules framed under the Tenth Schedule. The Court said: “Rules under the Tenth Schedule are procedural in nature. Any violation of those would be a procedural irregularity. Procedural irregularity is immune from judicial scrutiny.”

In *Rajendra Singh Rana Case* 625 the issue was when can a court review the Speaker’s decision making process under the Tenth Schedule? The Court said: “If the Speaker fails to act on a complaint, or accepts claims of splits or mergers without making a finding, he fails to act as per the Tenth Schedule. The Court said that ignoring a petition for disqualification is not merely an irregularity but a violation of constitutional duties.”

Perhaps the one clause that has come under the judicial microscope the maximum number of times, is clause of para 2 that sets out the disqualifications of a

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620 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
621 Dr. Kashinath G Jhalmi V. Speaker, Goa Legislative Assembly (1993) 2 SCC 703
622 Ravi S Naik V. Union of India AIR 1994 SC 1558.
623 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.
624 Ravi S Naik V. Union of India AIR 1994 SC 1558.
625 Rajendra Singh Rana and Ors. V. Swami Prasad Maurya and Ors. (2007) 4 SCC 270
member if he votes/abstains from voting against the party directions, has been challenged. The Supreme Court has analyzed this point in detail in *Kihota Hollohon Case.* 626 Explaining its position, the court said, "there are certain side effects and fall out which might affect and hurt even honest dissenters and conscientious objectors, but these are the usual plus and minus of all areas of experimental legislation. In these areas, the distinction between what is constitutionally permissible and what is outside it is marked by a 'hazy gray line' and it is the Court's duty to identify, 'darken and deepen' the demarcating line of constitutionality..."

The scope of this anti-defection law was examined in detail in *Kihota Hollohon Case* 627, a case that also analyzed various other aspects of this legislation also. Here, the court, speaking about the necessity of an anti-defection legislation, said, "The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed to disqualify the members of either House of Parliament or of the State Legislature who is found to have defected from continuing as a Member of the House. The grounds of disqualification are specified in Paragraph 2 of the Tenth Schedule." However, the researcher feels that no concept is perfect and that this concept has also got certain disadvantages 628 also besides having some outstanding advantages. 629

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626 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412. Holding that the provisions of the Tenth Schedule are perfectly valid, the Court went on to say, that the Paragraph 2 of the Tenth Schedule of the Constitution is valid. It does not violate their freedom of speech, freedom of vote and conscience as contended. The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 195 of the Constitution.

627 Kihota Hollohon V. Zachilhu and Others AIR 1993 SC412.

628 Disadvantages are: (i) By preventing parliamentarians from changing parties, it reduces the accountability of the government to the Parliament and the people. (ii) It interferes with the member’s freedom of speech and expression by curbing dissent against party policies.

629 Advantages are: (i) Anti-Defection Law provides stability to the government by preventing shifts of party allegiance. (ii) It ensures that candidates elected with party support and on the basis of party manifestoes remain loyal to the party policies. (iii) It also promotes party discipline.