INTRODUCTION

"Defection covers the change of party affiliation both from the opposition to the government side or vice versa as also change as between the parties on the side of the house i.e. between the constituent units of coalition government or between the different parties sitting on the opposition benches."

-Subhash C. Kashyap

The evil of defection is not confined to India only. It is rampant, perpetuating and flourishing in other countries having Parliamentary form of Government. In a plain language defection simply means switching over one’s loyalty from one political party to another political party. The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. The year of 1967 saw the formation of coalition government and thereby an unhealthy tradition of defection resulting in synthetic majority in Indian democracy. In this research the researcher appraises the main features of anti-defection law, its working, its history and its interpretation by the Indian Courts.

1 Cited from S.K.Khana, Reforming Indian Political System, p. 174
3 The term defection has been derived, as the dictionary meaning suggests, from the Latin word ‘defectio’, indicating an act of abandonment of a person or a cause to which such person is bound by reasons of allegiance or duty, or to which he has willfully attached himself.
4 The Statement of Objects and Reasons accompanying the Constitution (Fifty second Amendment) Act, 1985.
6 This research appears in the background of a worldwide realization that the defection has rapidly risen in importance to become one of the foremost concerns of the democracies in general and in India in particular due to its severity in India. There are instances where governments have fallen due to defection from or split in a political party. In India also even after the Anti-defection law came into operation, Governments have fallen in various States due to political defections as in the case in Goa in 1989, Sikkim in 1994 and Arunachal Pradesh in 1999 and 2003.
• **Preliminary**

The politics of defection has been the bane of the parliamentary system in India. The vice of defection has been rampant in India for quite some time, especially at the State level. The preliminary section gives an insight into the highlights of the study with regard to the research problem, the hypothesis, the method adopted for the conduct of the study. It further gives a brief description about the various chapters and their concerns in this study.

• **Research Problem**

The problem of defection- switching loyalty from one political party to another has been haunting the Indian polity for over 30 years. Beginning in 1960s, the politics of 'Aya Ram and Gaya Ram' has reached such a level that frequent defections, splits, and the consequent governmental instability have vitiated the democratic ethos of our polity. The anti-defection law of 1985 and the latest Constitutional amendment to plug the loopholes have hardly made any impact. Rather than solving or containing the problem of defection, the law has aggravated it.

Contributing to the problem of governmental instability at the centre and in many states, the law has exposed the most immoral and unethical character of our politicians making a mockery of our democracy. This research paper presents various perspectives on defections with specific reference to defection politics in India. At this juncture the researcher has identified the following issues.

(i) The power of Speaker or chairman to decide questions
(ii) Voluntarily giving up membership of party
(iii) Violation of party whip/direction
(iv) Splits and mergers
(v) Expulsions and status of unattached members
(vi) Interpretation of the term 'political party'

• **Objectives of the Study**

Thus in order to maintain the true spirit of democracy it is very much necessary for the legislature to bring in such legislations as for instance the Anti-Defection Laws.

The main objectives of the conducting research on this topic are:-

1. To ascertain and clarify the provisions relating to defection under the Constitution.
2. To examine judicial standpoint on the tenth schedule.
3. To examine, the consequence of defection.
4. To gain familiarity with the phenomenon of defection and to achieve new insights into it.
5. To make an exploration in depth of the position of Anti-Defection Law in India.
6. To find out the course of Anti-Defection Law evolution.
7. To find out the existing statutory law and case law on Anti-Defection.
8. To find out what the law is in other countries and considering whether it can be drawn upon, with or without modification.
9. To collect the primary and secondary data to show the working of Anti-Defection.
10. To find out the defects in the existing law and suggesting reforms.
11. To study how much relief is available under those avenues.
12. To study role of Anti-Defection Law in India in democracy.
13. To study and evaluate Anti-Defection Law as an efficient, speedy and effective system.
14. To study the factors responsible for growth of Defection in India and
15. Lastly to study the image of Anti-Defection Law in the minds of common people and politicians.

- **Hypothesis**

  The Anti-Defection Laws in India though made with the most laudable idea is undemocratic in the light of para 2(1) (b) of the 10th schedule. The present provisions in the Constitution now disqualify legislators who switch allegiances and require them to vote as per the instructions of the party whip. It no longer matters what an individual legislator or his/her constituency thinks. It only matters what the party leadership requires him/her to think while voting. The concept of whip may be appreciated only when the Bill or the discussion is pertaining to Money Bill or a constitutional Amendment or such other Bills of paramount importance. Without demarcating the importance attached to the kinds of Whip and the attitude of the Legislators towards such Whips has caused serious injury to the term “representative government” under democracy.
• **Significance of Research**

An attempt is made in this research paper to make sure that the laws governing defections are well administered in order to up hold the true spirit of democracy. This research is better appreciated by the Election Commission, Legislators, Members of Parliament, Bureaucrats, Academicians, Advocates and Law Students and at last but the most benefitted, towards which the entire the task is devoted to, the public at large.

• **Method of the Study**

In this study the researcher has adopted doctrinal method for collecting information of data through secondary sources like books, websites, articles, journals, judgments, and internet sources. However, wherever feasible data has been supplied to make the study real and effective.

• **Chapterization Scheme**

Regarding the organization, the present treatise has been divided in to 6 Chapters.

**Chapter 1**

Chapter 1 at the outset introduces the concept of defection and evolution the Anti-Defection Law in India. At the beginning meaning and definitions are stated and then the Defection in India and UK are described. The Rationale behind the Anti-Defection Law is elaborately discussed. The Extent of Anti-Defection Laws has been given. Out of one hundred and ninety three nations only forty one nations had floor-crossing laws. Laws against crossing the floor are sometimes not mere “laws”, they are often enshrined in national constitutions. The present researcher has also given the historical background of Anti-Defection Law in detail. Views of Legislators and Public Men on Crossing the Floor have also been given. Reports and Recommendations of Committees on Defection have been analyzed. The Constitution (Ninety first Amendment) Act, 2003 and Issues in Anti Defection Law have made this study more up to date. A Comparison has been made with other countries of Indian Anti-Defection Legislation.

**Chapter 2**

The present researcher has attempted to trace the Constitutional Provisions Relating to Anti-Defection Law in Chapter 2. The purposes for enacting the Constitution (Fifty-second Amendment) Act, 1985 i.e. incorporation of the Tenth
Schedule and other amendments are outlined. Constitutional provisions and their Interpretations by Speakers are also analyzed. The scope of Tenth Schedule along with Art. 105 have been examined. An attempt has been made to view scope of judicial review and the meanings of political party and legislature party have also been analyzed. Comments and Case laws have been elaborated in detail. Status of a member being ‘unattached’, voluntarily giving up Membership and meaning of join have also been studied. Whip or direction and split have also been traced. Scope of speaker’s power of review and review of speaker’s order and bar of jurisdiction of courts have also been examined. Defection rules of states have also been given.

Chapter 3

Chapter-3 entitled “Disqualification, Split and Merger : A Study of Some Prominent Cases in Indian Parliament” explores the cases under the Tenth Schedule to the Constitution that broadly fall under three categories, namely petitions seeking disqualification of members, claims of splits and mergers. At the outset the Disqualifications of various members in Lok Sabha is stated. A bird’s eye view of opinion of Attorney-General of India has been given a close look and Six Janata Group Defections and Other Party Splits i.e. Defections to the Congress like Shiv Sena, Telugu Desam, Nagaland People’s Party (P), Jharkhand Mukti Morcha, Notice of Privilege, M.P. Vikas Party, Congress(l), AIADMK, Congress(l), N.C.P. and RJD etc. have been examined in full detail. An attempt has been made to critically analyze the Cases of disqualification in Rajya Sabha. At last, statements of Disqualifications, Splits and Mergers have been given.

Chapter 4

Chapter 4- entitled “Disqualification, Split and Merger: A Study of Some Prominent Cases in State Legisatures ” intends to evaluate cases in state legislature intends to evaluate cases in state legislatures. Notwithstanding the Anti-Defection Law, some of the Governments, inter alia, in Nagaland, Mizoram, Andhra Pradesh, Tamil Nadu, Pondicherry, Manipur, Arunachal Pradesh, Goa, Gujarat, Meghalaya and Sikkim were brought down through defections. Andhra Pradesh to West Bengal have been examined at length. In this chapter, an endeavour has been made to compile and analyze the cases of defection in Indian States. Statements of Disqualifications, Splits and Mergers of Haryana Vidhan Sabha have also been given.
Chapter 5

The formal courts dispensing justice have not lost ground and still play a major role in interpretation and laying down rules of law and justice. Judicial Approach towards Defection has been undertaken in chapter 5. The various judgments of the Hon’ble Supreme Court of India and various other High Courts of different states in India given in this chapter will help jurists, lawyers and students in understanding the concept and law relating to Anti-Defection Law in India.

Chapter 6

Chapter 6 addresses the conclusions and suggestions arrived at as a result of discussions in the previous chapters. In conclusions, an appraisal of whole study is given. In fact, it is the final summing up. It is earnestly hoped that the conclusions drawn and the suggestions presented on the basis of the critical study in this discourse will be a real contribution to the field.

1. Defection: Meaning and Definition

The term defection appears to have been derived, as the dictionary meaning suggests, from the Latin word ‘defectio’, indicating an act of abandonment of a person or a cause to which such person is bound by reasons of allegiance or duty, or to which he has willfully attached himself.\(^7\) It, similarly, indicates revolt, dissent, and rebellion by a person or a party.\(^8\) In politics, a defector is a person who gives up allegiance to one state or political entity in exchange for allegiance to another.\(^9\)

More broadly, it involves abandoning a person, cause or doctrine to which one is bound by some tie, as of allegiance or duty.\(^10\) Traditionally, this phenomenon is known as ‘floor crossing’ which had its origin in the British House of Commons where a legislator changed his allegiance when he crossed the floor and moved from the Government to the opposition side, or vice versa.\(^11\)

Thus the term has come to connote change of party affiliation or allegiance by the member of a legislature.\(^12\)

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\(^7\) G.C. Malhotra, Anti -Defection Law in India and the Commonwealth p.3. See also Webster Dictionary, Oxford Dictionary.


\(^9\) http://en.wikipedia.org

\(^10\) ibid.


Prof. Madhu Dandavate defines defection:-

"An elected member of a legislature who had been allotted the reserved symbol of any political party can be said to have defected, if after being elected as a member of either house or of legislative assembly or legislative council of a state he voluntarily renounces allegiance to or association with such political party, provided his action in not in consequence of a decision of the party concerned".13

In a plain language defection simply means switching over one’s loyalty from one political party to another political party.

2. Cases of defections in the United Kingdom

In the early stages of their parliamentary struggles for the political power in the United Kingdom, members resorted to defections frequently and even in large numbers. William Gladstone, regarded as the “grand old man” of British liberalism, began his Parliamentary career as a Conservative Member when he was elected to Parliament in December 1832.14 During Peel’s second Ministry (1841-46), he crossed over to the Liberal side and was made Vice-President of the Board and later Secretary of State for the colonies.15

In 1886, there was a mass defection from the Liberal Party. Joseph Chamberlain was strongly opposed to the Irish Home Rule Bill and crossed the floor along with 93 other Liberal and Whig MPs. The defectors formed an independent group called the Liberal Unionists, but they voted with the Conservatives.16 The House Rule Bill was defeated at the second reading stage and the Gladstone ministry had to resign.17

Winston Churchill’s political career was marked by repeated floor crossing. Churchill began his parliamentary life as a Conservative. In 1904 he defected from the Conservative Party and crossed over to the Liberal Party.18 From 1904 to 1922,

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15 Janda: Laws Against Party Switching, Defecting, or Floor-Crossing
16 G.C.Malhotra, Anti-Defection Law in India and the Commonwealth, 2005 p. 4
Churchill remained a Liberal. In 1922, he contested the election as a “Lloyd George Liberal”. 19

3. Cases of defections in India

Indian politics has been no exception to this phenomenon of defections. In fact, the history of defections in India can be traced back to the days of Central Legislature when Shri Shyam Lal Nehru, a member of Central Legislature changed his allegiance from Congress Party to British side. 20 To cite one more instance, in 1937 Shri Hafiz Mohammed Ibrahim, who was elected to the Uttar Pradesh Legislative Assembly on the Muslim League ticket defected to join Congress. 21

In late sixties, the phenomenon of changing political party for reasons other than ideological engulfed the Indian polity. According to the Chavan Committee Report (1969), following the Fourth General Elections, in the short period between March 1967 and February 1968, the Indian political scene was characterized by numerous instances of change of party allegiance by legislator in several States. Out of roughly 542 cases in the entire two decade period between the First and the Fourth general elections, at least 438 defections occurred in these 12 months alone. 22 Among independents, 157 out of a total 376 elected, joined various political parties in this period. That the lure of office played a dominant part on decisions of legislators to defect. It was obvious from the fact that out of 210 defecting legislators of various states, 116 were included in the Councils of Ministers which they helped to form by defections. 23 By the end of March 1971 Approximately 50 percent of the legislators

19 Sudarshan Agarwal, The Anti-Defection Law in India, Parliamentarian, January 1986, LXVII No.1, p.22.
23 Ibid.
had changed their affiliations and several of them did so more than once—some of them as many as five times.  

4. Rationale Behind the Anti-Defection Law

The evil of defection is not confined to India only. It is rampant, perpetuating and flourishing in other countries having Parliamentary form of Government. Therefore, effects have been made by various Parliaments to cope with the problem with the help of legislations. Generally speaking, the rationale behind enacting an anti-defection law, providing for punitive measures against a member who defects from one party to another after election, is that it is aimed at ensuring stability especially in a parliamentary form of government. The law on defection seeks to provide safety measures to protect both the government and the opposition from instability arising out of shifts of party allegiance.

There are instances where governments have fallen due to defection from or split in a political party. For example, in Sri Lanka on two occasions, in 1964 and 2001, Government fell due to defection. Governments have also fallen elsewhere in the world, including in the United Kingdom where there is no Anti-defection law, due to defection or split in a political party. In India also even after the Anti-defection law came into operation, Governments have fallen in various States due to political defections as in the case in Goa in 1989, Sikkim in 1994 and Arunachal Pradesh in 1999 and 2003.22 These examples are only illustrative and not exhaustive.

In modern democracies, most of the members are elected to Parliament with substantial support and help from their parties and on the basis of their party manifestos. Constituents cast their votes in favour of contesting candidates not only keeping in mind their person qualities but also the policies and programmes of their parties. It is, therefore, argued that a successful candidate is bound by the pledges made by his party during the electioneering. He is expected to remain loyal to his

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26 G.C. Malhotra, Anti-Defection Law in India and the Commonwealth, 2005 p.5.
28 G.C. Malhotra, Anti-Defection Law in India and the Commonwealth, 2005 p.5
party and abide by the party discipline. If he chooses to leave the party, he must lose his membership too.\textsuperscript{29}

This logic could be put forwarded equally forcefully in the case of the countries having the system of proportional representation in which parties play a crucial role in getting their members elected. Anti-defection law should be essential component of such a system to ensure that the results of an election are not adversely affected by defecting members who gained their seats in the legislature solely because of their position on the party list..

In on the other hand there is also a school of thought which holds the view that the Anti-defection laws tend to restrict the freedom of members of Parliament in the performance of their duties and interfere with the member’s right to freedom of speech and expression.\textsuperscript{30}

In view of the above, it may not be out of place to mention here that while stability of the government is important, equally desirable its accountability to the House which consists of members who in turn are accountable not only to their political partis but also to the electorate.

5. The Extent of Anti-Defection Laws

Only five out of older thirty six democratic nations \textsuperscript{31} (that comes nearly fourteen percent) had floor-crossing laws. Thirteen out of fifty four newer democratic nations\textsuperscript{32} (that comes nearly twenty four percent) had floor-crossing laws. Nineteen out of fifty eight semi-democratic nations\textsuperscript{33} (that comes nearly thirty three percent) had floor-crossing laws. Researcher was surprised to find that the position in non democratic nations\textsuperscript{34} is very poor and only four out of forty five (that comes nearly nine percent) had floor-crossing laws. So out of one hundred and ninety five nations

\textsuperscript{29} Ibid.
\textsuperscript{30} Ibid.
\textsuperscript{31} Older democratic nations like India, Israel, Portugal, Trinidad & Tobago etc.
\textsuperscript{32} Newer democratic nations like Belize, Bulgaria, Ghana, Guyana, Hungary, Samoa, Lesotho, Mexico, Namibia, Romania, Senegal, Suriname, Ukraine etc.
\textsuperscript{33} Semi-democratic nations like Armenia, Bangladesh, Fiji, Gabon, Kenya, Macedonia, Malawi, Mozambique, Nepal, Niger, Nigeria, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Sri Lanka, Tanzania, Uganda, Zambia etc.
\textsuperscript{34} Non democratic nations like Congo (Democratic Republic), Pakistan, Thailand, Zimbabwe etc.
only forty one nations had floor-crossing laws.\textsuperscript{35} Laws against crossing the floor are sometimes not mere "laws", they are often enshrined in national constitutions.\textsuperscript{36}

6. **Historical Background of Anti-Defection Law in India**

The history of defection in politics in India can be traced back to the days of Rama. Even in Ramayana we find the very same defection. Vibhishana, Brother of Ravana, defected from him and joined Rama.

During Montford Reforms, we find another example of Shyam Lal Nehru, a member of the Central Legislature who was elected on the Congress ticket but he crossed the floor and joined the British Side. At that time Pt. Moti Lal Nehru who was leader of


\textsuperscript{36} Belize- Article 59. Tenure of Office of Members (1) Every member of the House of Representatives shall vacate seat in the House at the next dissolution of the Nation Assembly after his election. (2) A member of the House of Representatives shall also vacate His seat in the House if, having been a candidate of a political party and elected to the House of Representatives as a Candidate of that political party, he resigns from that political Party or crosses the floor.

Namibia- Article 48. Vacation of Seats (1) Members of the national Assembly shall vacate their seats: (b) if the political party which nominated them to sit in the National Assembly informs the speaker that such members are no longer members of such political party.

Nepal- Article 49. Vacation of Seats (1) the seat of a Member of parliament shall become vacant in the following circumstances: (ii) if the party of which he was a member when elected provides a notification in the manner set forth by law that he has abandoned the party.

Nigeria- Article 68, Tenure of Seat of Members (g) being a person whose election to the House was sponsored by a political party, he becomes he becomes a member of another political party before the expiration of period for which that House was elected.

Seychelles- Article 81. Vacation of Seats (1) A person ceases to be a member of the National Assembly and the seat occupied by that person in the Assembly and the seat occupied by that person in the Assembly shall become vacant- (2)(h)(f), in the case of a proportionally elected member- (i) the political party which nominated the person as member notifies another person as member in place of the first- mentioned person and notifies the Speaker in writing of the new nomination; (ii) the person ceases to be a member of the political party of which that person was a member at the time of election;

Sierra Leone- Article 77. Tenure of Seats of Members of Parliament (1) A member of Parliament shall vacate his seat in Parliament- (k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party;

Singapore- Article 46 (1) The seat of a Member of Parliament shall become vacant (b) if he ceases to be a member of, or is expelled or resigns from, the political party for which he stood in the election;

Zimbabwe- Article 41. Tenure of Seats of Members (1) Subject to the provisions of this section, the seat of a member of Parliament shall become vacant only- (e) if, being a member referred to in a section 38 (1) (a) and Having ceased to be a member of the political party of which he was a member at the date of his election to Parliament, the political party concerned, by written notice to the Speaker, declares that he has ceased to represent its interests in parliament

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the Assembly party strongly criticized and condemned him and Mr. Shyam Lal Nehru was expelled from the party.\footnote{Shyam, Moolchand, Politics of Defections and Democracy (1979)13 JCPS 328, 329. Also see Kashyap C. Subhash. The Politics Of Power 1974, p. 57-58.In 1937 elections which were held under the Government of India Act, 1935 the Congress was returned with absolute majority in the United Provinces. However, the Chief Minister G.B. Pant deemed it proper to induce some members of Muslim League to cross the floor and join the Congress. One of these, Hafiz Mohammad Ibraham was included in the Congress Ministry.}

(I) Pre 1973 Position

In 1948, the Congress Socialist Party left the Congress party and directed all its members to resign their seats in the assemblies and seek re-election. But this ideal could not become a precedent. In 1950, twenty three MLAs defected from the Congress Party and formed the Jana Congress in Uttar Pradesh, Again in 1958 some ninety eight MLAs openly defied the government which led to the fall of the Sampurnanand Ministry. The Praja Socialist Party (PSP) is good case study of defections. In 1953 the PSP leader Prakasham defected from the PSP and joined the Congress to form the Government in Andhra Pradesh.\footnote{Krishan Singh Chauhan, Problems of Defection and Indian Constitution: A Study of Emerging Trends, (1996)p.1}

Thanu Pillai, the then Chief Minister of the State of the Travancore-Cochin is another instance of defection from the PSP. More or less some defections have been taking place in all the states but did not succeed to create a ripple. For instance, during the period 1957-1967, 97 members defected from the Congress and 419 defected to it. While in 1967-68 (one year period) 175 defected from it and 139 defected to it. During the period 1957-1967, 93 members defected from the PSP and only 11 to it.\footnote{Ibid. See also Nitin Thatai, Anti-Defection Law & Election Law: A Critical Appraisal, p5}

In the fourth general elections, Congress retained majority in the Lok Sabha by securing 283 seats out of 520 seats but lost absolute majority in eight of the Sixteen states of the Union that went to the polls.\footnote{In fourth general election Congress lost majority in the State Assemblies of Kerala, Madras, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal. In Rajasthan, president’s rule had to be imposed before the Congress could form a government with help of few defectors, in U.P. Congress managed to form a Ministry even though it was short lived, in Madras, Dr. M. Karunanidhi formed its government while in remaining five states non-Congress coalition governments was formed. See also Krishan Singh Chauhan, Problems of Defection and Indian Constitution: A Study of Emerging Trends, (1996)p. 11. Shyam, Moolchand Politics of Defections and Democracy (1979)13 JCPS, Kashyap, Subhash C. The Politics Of Power 1974,} Even in states where the party
retained control, its strength was much depleted. However in the eight states where congress has failed to get absolute majorities no single party has taken its place.

As a consequence of fourth general elections, the virtual monopoly of political power by Congress party was shattered away. The highly disunited opposition saw in the situation an opportunity to seize power. The political parties which fought tooth and nail against each other at the polls forget their ideological differences and came forward to share power on the basis of what were called the agreed minimum programme. Thus the most significant development of post fourth general election period was the formation of coalition Governments of widely heterogeneous elements in several states. The other outstanding development that characterized the post fourth general election scene in Indian politics, was the phenomenon of large number of a migratory legislators in various states indulging in frequent marches and countermarches from one political platform to another. Mainly with a view to gain ministerial office or other personal benefit, if necessary, by helping to topple successive governments and forming others in their places.

The phenomenon of defection became acute and apparent after the Fourth General Elections in 1967 about which the figures speak for themselves. Whereas upto 1967, there have been about only 400 defections, within one year from the election of 1967, there were 500 odd defections, of whom the figures also say, 118 were by persons who became Ministers or Ministers of State. The problem became so important from the point of view of preserving the best traditions of democracy and of setting certain norms of political behavior. Views of Legislators and Public Men on Crossing the Floor

Shri. K.K. Shah, Union Minister says:-

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42 On October 30, 1967, a Haryana Legislator, Gaya Lal who had earlier crossed the floor to join the United Front Ministry returned to the opposition thereby reducing the Front strength to 38 and increasing the opposition strength to 41. But within 9 hours, Gaya Lal once again changed his party to rejoin the United Front, he became a Parliamentary Secretary on November 1, 1967. Thus by defecting thrice within a fortnight, Gaya Lal set a new record in the Chronicle of defection politics in Haryana. It is said that the title of “Aaya Ram Gaya Ram” was given to Gaya Lal by Rao Birender Singh.
“The need of the house is of national consensus and political parties must address themselves this question. Frequent dissolution of legislatures would not be the only panacea for political instability.”

Views of Shri Ashok Mehta, Union Minister:-

“Economic instability is leading to poll instability and also political instability. Unless some kind of national consensus is evolved, there is no way of dealing with.”

Shri. J.B. Kriplani, M.P., Independent, says:-

“Including legislators in opposition to join the ruling party by lure of seats in the Cabinet is neither politically nor morally justified and is highly undesirable and unethical. It degrades the individual, creates distrust. Such parties and people should have no place in public life and the country.”

Prof. Balraj Madhok, M.P., BIS:-

“The way floor crossing is taking place in India has nothing to do with the ideology or policy differences but, mainly with a view to improving one’s prospect in terms of power and is not justified morally. It is bound to undermine people’s faith in their elected representatives. The remedy lies in proper convention in this country.”

Shri. Kamraj says “It would be a good idea if some code could be evolved to prevent members of different parties changing their loyalties too often.”

Shri. Jaya Prakash Naryan:-

“Political parties should not admit any defecting legislator without his first agreeing to seek fresh mandate from the people by resigning his seat.”

Committee on Defection

On August 11, 1967 a prominent Congress member of the Lok Sabha, P. Venkata Subbaiah who was the Secretary of Congress party in Parliament, moved a non official resolution seeking appointment of a Committee on defections. The Lok Sabha discussed the matter at length on November 24 and December 8 1967. The resolution was adopted by the House with an amendment moved by the S.S.P. leader Madhu Limaye. The resolution as passed by the House read as follows-

43 Report on conference organized by the Centre of Applied Politics ( “STATEMAN”, 7 August, 1967)
44 Ibid.
46 Opinion Survey conducted by” Hindustan Times”: 31 July, 1967
48 “ Hindustan Times”, 24 JULY. 1967
"This House is of opinion that a high level Committee consisting of representatives of political parties and constitutional experts set up immediately by the government to consider the problems of legislators changing their allegiance from one party to another and their frequent crossing of floor in all its aspects and make recommendations in this regards"

Madha Limaye's amendment sought to omit the concluding portion of the original resolution which provided for the proposed Committee's evolving of special machinery and taking the effective measures by to suitable legislation to arrest this growing phenomenon which is assuming alarming proportion so that the country can function on sound and healthy lines of parliamentary democracy. He was of the opinion that it would be the contrary to the provisions of the Constitution to impose by law any restrictions on floor crossing.\(^49\)

The Committee which was constituted by the Houses consisted of the Union Home Minister as Chairman, the Union Law Minister, the Union Minister for Parliamentary Affairs, the representatives of 8 political parties and three Independent groups recognized by the Speaker in the Lok Sabha. And the other members were, Shri P. Venkatasubbiah, Shri Jaya Pakash Narayan, Shri H.N. Kunzru, Shri C.K.Daphtary, Shri H.M.Scervai, Shri M.C.Setalvad and Shri Mohan Kumarmangalam. Representatives are as follows-

1. Prof. N.G.Ranga-Swatrantra
2. Prof.Balraj Madhok Jan Sangh
3. Shri S.N. Dwivedy-PSP
4. Shri Madhu Limaye-SSP
5. Shri Bhupesh Gupta-CPI
6. Shri P. Ramamurti -CPM
7. Shri Ambazhagan-DMK
8. Shri N.C. Chatterjee-Progressive Group
9. Shri Raghuvir Shastri-Nirdaliya Sangathan
10. Dr. Karni Singh –Independent Parliamentary Group

In pursuance of the Lok Sabha resolution, the Government of India decided in February 1968 to appoint the above Committee which was constituted under the

Chairmanship of the then Home Minister, Shri Y.B. Chavan, while informing the Lok Sabha of the appointment of the Committee on March 21, 1968 he described defections as “a national malady which is eating into the very vital of our democracy” 51

The Committee held six meetings on March 26, April 18, May 12, July 14, August 8 and September 28 1968. The report of the committee on Defections was signed on January 7, 1969 and was presented to Parliament on February 18, 1969. 52

In drawing up its report and formulating its recommendations, the Committee on defections placed before itself the following considerations.

(a) There can be no perfect or infallible deterrent for the kind of political defections that are rooted in political irresponsibility and opportunism and create instability, besides bringing the functioning of the democratic institution into disrepute.

(b) The task of devising remedial measures for complex political problem has to balance carefully the need for ensuring political stability with-

I. The natural processes of organic growth of parties.

II. The inevitability of a period of transition preliminary to the forgoing of ideological polarization or clarity with uncertainties attendant on the transition, and

III. The avoidance of rigidity which would impinge adversely on honest and genuine dissent or change of convictions or on readjustment of party alignments, in the form of mergers, splits etc., as a part of the process of reaching ideological polarization or clarity.

(c) The best legislative or constitutional devices cannot succeed without a corresponding recognition on the part of political parties of the imperative necessity for a basic political morality and the observance by them of certain properties and decencies of public life, and their obligations mutually to one another and to the citizens of this country and,

(d) The problem requires to be attacked simultaneously on the political, educational and ethical planes so that by an intensive political education both

51 1968) L.S.D. (March 21, 1968), also see (1968) RSD (August 12, 1969) p.3716-Motion re-Report of the Committee on Defections which was laid on the table of the Rajya Sabha on February 18, 1969.
the elite and the masses, a full consciousness of the values of democratic way of life is created.\textsuperscript{53}

The Committee made several recommendations suggesting ethical, political constitutional and legislative solution of the problem in hand.

Ultimately, the general agreement was that the problem of defections can be effectively tackled by some sort of evolution of a Code of conduct amongst the political parties themselves. The problem has become a matter of concern to all, because the motivation for defections arising out of political opportunism, if it is to be met some constitutional measures, will have to be thought of.\textsuperscript{54}

While participating in the discussion on the recommendation made by the Committee on Defections, Shri Thillai Villalan traces the history of about ‘Aya Ram and Gaya Ram.’ He has argued that defection started from the days of Rama. Even in the Ramayana, we can find the very same defection. But it was not called defection, it was called treachery. Vibhishana, brother of Ravana, defected from Ravana and joined Rama, was responsible for the defeat of Ravana. But now we are experiencing a different kind of defection. Political instability is the main defect of this malady of defection. He has further termed defection as ‘political cancer’.

According to him the recommendations can be divided into two parts. One is medicinal and the other is surgical. So far as the ethical and political aspects are concerned, he has called them the medicinal treatment so far as the constitutional and legislative aspects are concerned, has called them as surgical treatment.\textsuperscript{55}

First of all, the political parties and the persons representing their constituencies in the Assemblies and Parliament must follow a certain code of conduct. On the question certain code of conduct which ought to be followed by the Legislators, he further referred a couplet from Thiruk Kural.\textsuperscript{56} “Chiral Kakkum Kappevan Seiyum Magalir Nirai Kakkum Kappe Talai” This couplet means the

\textsuperscript{53} Similar opinion has been expressed by Kashyap Subhash C., The politics of Power Defections and State Politics in India (1974), page 92, also see report of the Committee of Defections (1969), Report of the Sub Committee of Lawyers, Committee of Defections(1968).

\textsuperscript{54} (1969) RSD (August 12, 1969) page 3718, also see the report of the Committee on Defections(1969)

\textsuperscript{55} (1969) R.S.D. (August 12, 1969) P.3784. In the report, the Committee has stressed on the solution as follows- “…….. a lasting solution to the problem can only come from the adherence by Political parties to a code of conduct or set of conventions that took into account the fundamental properties and decencies that ought to govern the functioning of democratic institutions.”

chastity of a woman can be saved only by her own self and not by anybody outside. So the defector must control himself because he participates in an election as a candidate set up by a political party. He wants to represent a part of the country. Therefore, he must be a man with some principles. First, he must control himself because, according to this couplet, the woman alone can save her chastity, not any outside force. The defectors must know that he is a man representing a number of people and so he must control himself.\(^{57}\)

So far as the surgical part of the treatment regarding defection, he suggested for an amendment in the Representation of the People Act as well as the Constitution. He further submitted that-

"There should be a right to the electorate to recall a defector. This is there in Switzerland because it is expensive, the proposition may not be practicable here. But it is the most Democratic way of checking defections. We must amend the Constitution so as to provide for the right of recall to the people because it is the people who has given him the right to represent themselves to ventilate their grievances to express their own feelings"\(^{58}\)

Shri P.Cheta quoting the observation of the Committee on Defections which says as follows-

".......a lasting solution to the problem can only come from the adherence by political parties to a code of conduct or set of conventions that took into account the fundamental properties and decencies that ought to govern the functioning of democratic institutions"\(^{59}\) He further quoted the recommendation which require that the standing committee be constituted which are reproduced as follows-

"One suggestion placed before the Committee was that this could be achieved by having a Standing Committee or Board comprising leaders of political parties and men with legal background who were highly regarded in the country for their experience of public affairs objectivity, integrity, and political neutrality."\(^{60}\)

He further said that a defector must be kept out of public life for a prescribed period. "Any political party which had a grievance against other for non-observance of the Code could take up the matter before the Board which, if the material before it was adequate could convey its censure or disapproval which in due course would

\(^{57}\) Ibid. p. 3786.
\(^{58}\) Ibid.
\(^{59}\) Ibid. p. 3787.
\(^{60}\) Ibid.
acquire moral sanction. When the board censures a particular member for violating political properties, the political parties could be asked to ensure that he was kept out of public life for a prescribed period.\footnote{Ibid. p. 3788.}

Bare perusal of the above “ethical” recommendations of the Committee, it is clear that the committee has tried to contain the future defections by recommending that a defector should be kept out of public life for a prescribed period.

The Lawyers Sub Committee which was constituted by the Committee on Defections after a very careful consideration of the constitutional and legal position stated:-

“As standing for election to Parliament or State Legislature is only a statutory right as distinct from a fundamental right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable in the public interest. On this basis it is possible to provide in a special legislation that a legislator who renounces his membership of or repudiates his allegiance to a political party, shall be disqualified from continuing as a Member of Parliament or of State Legislature” \footnote{Ibid. p. 3792.}

But the above view of the Lawyers Sub Committee was rejected by the Committee on Defections.\footnote{Report of Committee on Defection, 1967, See also Subash C. kashyap, Anti Defection Law and Parliamentary privileges, Third Edition, 2011, .p 3.}

“The proposal would have the effect of freezing political parties in their present state and thereby their organic growth process. In the present situation it would be harmful to do anything that would prevent polarization of political forces; splits, mergers amalgamations etc were part of the process of ideological consolidation and they should not be interfered with.”

The Committee on Defections after a careful consideration has accepted the following definition of ‘defector’ :- “An elected Member of a Legislature who had been allotted the reserved symbol of any political party, can be said to have defected if, after being elected as a Member of either House of Parliament or of the Legislative Council or the Legislative Assembly of a State or Union Territory, he voluntarily
renounces allegiance to or association with such political party, provided his action is not in consequence of a decision of the party concerned.”

**Recommendations of Committee on Defections**

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

Another recommendation was with the regard to the limiting the size of the Council of Ministers. This was considered necessary because the number of people who were included in the Council of Ministers sometimes appears to be unending. As the life of the Government proceeded, the Council of Ministers went on inflating. And sometimes it was found that most of the members of the party forming the government were in the Council of Ministers. So in order to find the solution to this problem, the recommendation was made by the Committee that there should be limitation on the size of the Council of Ministers. Of course, what that size should be, certainly has become a bone of contention.

Another very important recommendation made by a group of very distinguished lawyers who were asked to go into the problem of the principle of limiting the size of Council of Ministers. They recommended that the defectors should cease to be Members unless they go back and get themselves elected. That recommendation was made by the lawyers group. But the Committee did not think it possible to accept these recommendations.

M.C Chagla while participating in the discussion on the recommendations made by the Committee on Defections said:-

“France is an illusion which our country should always bear in mind you remembers. Sir, that in France Ministries used to fall every six months and eight months. It was supposed to be a Ministry of very great stability if it lasted ten months or twelve months which was hardly ever a case. Why was that? Because there were no fixed parties because there were constant fluctuations in Parliament, because people did not adhere to any convictions or any principles. The result of that was that a dictator appeared on the scene and the dictator was General de Gaulle, who practically

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65 Ibid. p. 3720.
put an end to the old system and introduced a system where there was stability in the country. 66

M.C. Chagla while participating in the discussion on the recommendations made by the Committee on Defections observe:-

“The so called crossing of the floor or change of conviction should normally take place at the General Elections. It is at the General Elections that the Electorate decides who should be its representatives. And once those representatives are sent to Parliament and to the Legislatures, by and large there should be stability in the formation of parties or groups of the Opposition. This constant change is not desirable from the point of view of parliamentary institutions.” 67

He further said that the only time when a political person may be permitted to change his party is the General Elections- “Therefore it is incorrect to say that you will freeze the situation if you try and prevent people from crossing the floor. There is always the General Elections. There is always the electorate. Let the electorate decide. But once it has decided, normally it is the duty of the Member to respect the wishes of the electorate and to remain in the party to which it has been elected.” 68 On the issue of banning defection, N.A. Palkhivala has spoken very strongly against it. He considers the proposal as “truly savage” and the one which has nothing to do with the defections.69

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

“ No greater insult can be imagined to the members of the Parliament and the State Legislatures than to tell them that once they became members of a political party, apart from any question of the party constitution and any disciplinary action the party may choose to take, the Constitution of India itself expects them to have no right to form judgment and no liberty to think for themselves, but they must become soulless and conscienceless entities who would be driven by their political party in whichever direction the party chooses to push them” 70

M.C. Chagla who beside being Member of House of Council of States, was an eminent lawyer, while participating in the discussion on the percentage of Council of Ministers, rejected the idea of fixation of percentage and he observed that-

66 Ibid. p.3773
67 Ibid.
68 Ibid. p.3774
69 Palkhivala, NA, Our Constitution Defaced and Defiled (1974) p. 67
70 Ibid. p.68
“The Council of Members should not be as large as it is today either at the centre or in the states. Now, I am not one of those who believes that you should have a proportion fixed with regard to the Council of Ministers. To me it seems an absurd proposal that we must have 5 per cent, or 10 per cent or 15 per cent of the members of the Legislature constituting the Council of Ministers.”  

The then Home Minister Shri Y.B. Chavan while concluding the discussion by responding to the House on the recommendations of the “Committee on Defections” had observed-

“Therefore, the major field of recommendations that the Committee has made is the legislative measures that this Parliament should undertake. One recommendation is about the size of the Council of Ministers. The second is about barring the members who have defected from the party in terms of definition that the Committee has given. The third is that the Chief Minister of a State or the Prime Minister of the country should be members of the Lower House and not of the Upper House. These are the three major recommendations of this Committee.”

After discussion before the Parliament, no measure was taken till 1973. The condition of the defection continued unchecked. During March 1967 to March 1971 some thirty two Governments were toppled. Significantly, almost every single case of collapse of state government was the direct result of change of allegiance by legislators. Several other states where governments did not topple were also affected, to a larger or smaller degree, by this politics of defection. After 1971 election to Lok Sabha the three governments in Mysore, U.P. and Gujarat fell in quick succession in last week of March 1971, because of group defections.

The fall of the Veorendra Patil Ministry of the Congress in Mysore was followed by the imposition of the President’s rule in the State on March 27, 1971. The S.V.D. Ministry in U.P. was defeated in the Assembly on March 30, 1971 and the Congress leader, Sh. Kamalnath Tripathi was invited by the Governor to form a new government.

Congress was subject to a split in November 1969 and the two Congress one headed by Nijlingappa and other headed by Jagjivan Ram came to be known as Congress (O) and Congress (R) respectively. Mrs. Gandhi belonged to Congress (R).

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During the brief period of two months (i.e. February, March 1971) immediately before and after March 1971 elections, Congress(R) attracted 149 defectors. It was thought that the defections would become the thing of past because of Mrs. Gandhi’s impressive success in the elections as well as in the party crisis. Contrary to this popular impression, the average number and frequency of defections during 1971-73 period have been much larger than those during the entire 1967-71 period. The flow continued unabated only the directions kept on changing with the winds.

That Committee of Defections made certain recommendations and those recommendations were considered when the constitution (32\textsuperscript{nd} amendment) Bill 1973 was introduced first and that Bill, for the first time took cognizance of this phenomenon of what has has come to be termed as “Aya Ram Gaya Ram”. People crossed floor without any intelligible principle, but crossed the Floor mainly actuated by opportunise or for the purpose of gaining political advantage or a personal advantage.

(II) The Constitution (Thirty-second Amendment) Bill, 1973

After considering The Report of the Committee on Defections, the Government introduced on May 16, 1973 the Constitution (Thirty-second amendment) Bill, 1973\textsuperscript{74} the Lok Sabha The Bill, inter-alia provided that the Prime Minister/Chief Minister who is not a member of the House of the People/Legislative Assembly as the case may be shall acquire is membership within six months of assumption of that office.\textsuperscript{75}

It was proposed to insert the following clause to Article 102 of the Constitution-

2. \textit{A person shall be disqualified for continuing as a member of either House of the Parliament- a) If he, having been elected as such member, voluntarily

\textsuperscript{74} The statement of Object and Reasons- “when the Report of the Committee on Defections was considered it was felt that the recommendations that a defector should be rendered ineligible for certain offices of profit for a stipulated period would not provide an adequate solution and that it would be more appropriate to amend the constitution with a view of disqualifying a defector from his continued membership of the Legislature.”

\textsuperscript{75} The Constitution (32\textsuperscript{nd} Amendment) Bill, 1973 proposed to amend Article 75 by incorporating the following clause (5): “5. Prime Minister who for any period of six consecutive months is not a member of the House of the People or any other Minister who for any period of six consecutive months is not a member of either House of the Parliament, shall at the expiration of that period cease to be the Prime Minister or as the case may be a Minister” A similar provision was proposed to be substituted by clause (4) of Article 164.
gives up his membership of the political party by which he was set up a
candidate in such election or of which he became member after such election

b) If he votes or abstains from voting in such House contrary to any direction
issued by such political party or by any person or authority authorized by it in
this behalf without obtaining prior permission of such party, person or
authority.

3. Notwithstanding anything in clause (2), a member of either House of the
Parliament shall not be disqualified under sub clause (a) of clause (2) on the
ground that he has voluntarily given up his membership of any political party
if he has given up his membership of such political party by reason of split
therein.

4. Notwithstanding anything in Clause (2), where there has been split in any
political party (referred to in this clause as "Original political party") and
any group of members thereof has been registered under any law or any rule,
regulation, order or notification having force of a law with respect to matters
relating to, or in connection with, election to either House of Parliament as a
separate political party (referred to in this clause as "New political party")
then a member of either House of Parliament who belonged to the Original
political party and who became member of the New political party shall not be
disqualified under sub-clause (b) of clause (2) on the ground that he, at any
time after the registration of the new political party, has voted or abstained
from voting contrary to any direction of the original political party or any
person or authority authorized by it for the purpose of that sub clause." 76

The Constitution (32nd Amendment) Bill, 1973 was a relatively short
document consisting of ten clauses. It sought to amend eight articles of the
Constitution namely articles 75.101-103, 164 and 190-192. Actually it would be seen
that none of the recommendations of the Chavan Committee having a bearing on the
problem of defections had been incorporated in the Bill. On the other hand, proposal
which were bitterly opposed by some members of the Committee or which were not at
all considered by the Committee find a place in the proposed amendment Bill. Clauses
2 and 6 of the Bill seek to amend article 75 and 164 with a view to implement the

76 A similar provision was proposed to be substituted by amendment to Article 191 of the constitution.
proposal that the Prime Minister of India and the Chief Minister of the states should be the Member of the Lower House of the respective legislatures. In case a person who is not a member of the Lower House is appointed the Prime Minister or Chief Minister. He cannot continue as such for more than six months without getting elected to that House. Clause 10 declares that the amendment of article 164 shall not apply to any present incumbents of the office of the Chief Minister till the expiry of a period of six months.

The Principle was proposed to apply in keeping with democratic theory and practice elsewhere and by and large, with the prevailing norms and conventions of India. There was general consensus on the principle in the Committee on Defections. However, this hardly had much direct relevance to the problem of defections.

The provisions so far as the problem of defections is concerned are those pertaining to disqualification from membership and the new role and importance proposed to be assigned to political parties. Clauses 4 and 8 of the Bill sought to disqualify a person from continuing to be a Member of Parliament or state legislature if he voluntarily gives up the membership or votes or abstains from voting against the direction of the party by which he was set up a candidate for election or which he joined after such election. It was specifically provided that the proposed disqualification shall not apply to those cases where a legislator resigns from or votes against his party by reasons of split in his party.

Definition of Political Party under the Bill

Political party has been defined to mean any party classified as recognized political party under elections laws or any other party recognized by the speaker or chairman of the house as a political party and consisting of not less than 1/15th of the total membership of such house.

Thus, under the 1973 Bill, political parties would for the first time acquired constitutional recognition in clause 4 and 8 and status, and the party bosses an unprecedented hold over the minds and souls of the elected representatives of the people.

Clause 5 and 9 provided that the president and the governor, as the case may be, shall not entertain any question regarding the disqualification of a legislator unless it is referred to him by the political party concerned. However, the Bill left the independents or members of the smaller unrecognized parties completely out of the
preview of the disqualification clauses The Bill of 1973, however, lapsed with the
dissolution of the house of the people on January 18, 1977.

(III) The Constitution (Forty-eight Amendment) Bill, 1978

The matter was again considered by a committee headed by Chaudhary
Charan Singh, the then union home minister and on the basis of report of this
committee a bill known as the Constitution (forty-eight amendment) Bill, 1978 was
introduced in lok sabha on august 28, 1978. the bill proposed to specify defection as a
disqualification under articles 102 and 191 of the constitution. A schedule to be called
as the ‘tenth schedule’ was also proposed to be inserted to the constitution for making
detailed provisions as to disqualification on the ground of defection. One of these
provisions, however, provided that the disqualification on the ground of defection
should not apply in case of a split in the political parties.

It was also provided that the election commission may, by order provide for
registration of political parties for the purposes of proposed tenth schedule and the
presiding officer of a house should likewise provide for the recognition of political
parties for the same purpose. The relevant provisions sought to be included in the
tenth schedule.  

In 1977 when the internal emergency was revoked and elections were declared
a group of congress leaders deserted the party and formed another party named
CFD (which entered into an alliance with Janta party to go to polls, after the election
joined Janta government and later merged with janta party). a wave of defection

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77 3. disqualification on ground of defection not to apply in case of split:— "A member of
a house shall not be disqualified under membership of his original party and becomes a
member of a new political party formed as a result of split in his original political party;
but from the time he becomes a member of such political party: (a) He should be deemed
to belong to such new political party for the purposes of paragraph 2; and (b) such new
political party shall be deemed to be his original political party for the purposes of this
paragraph: Provided that:- (i) not less than twenty five percent of the member of the
legislature party concerned, or where the strength of such legislature party is less than
twenty, not less than five members of party, are members of such party, are members of
the new political party and (ii) The new political party has been recognised by the
chairman or, as the case may be, the speaker of such house Or registered with the
election commission under this schedule.

Power to make orders : (1) the chairman, or as the case may be, speaker ,of a house may,
by one or more orders, provide for the recognition of political parties for the purposes
of this schedule, the maintenance of registers or other records as to political parties, if any,
to which different members of the house belong and for such other matters of as he may
dream necessary for the discharge of his functions under this schedule. (2) the election
commission may, by one more orders ,provide for the registration of political parties for
the purposes of this schedule, the maintenance of registers or other records as to the
political parties, if any, to which different members of various houses belong and for
such other matters as may appear to it to be necessary for the purposes of this schedule"
started from congress to either CFD or janta party. again the second split of January 1978 in the congress party, when cong (i) secured majority in almost all the southern states in assembly polls a large number of congress members defected to congress(l) fold.  

It is often suggested that the greatest strain on Indian democracy is the politics of defection, and for this, an essentially political problem, the legal and Constitutional solutions have been suggested from time to time. in this series is the Constitution (Forty-eight Amendment) Bill, 1978 which janta government tried to introduce in monsoon session of parliament, but on the face of stiff opposition from the opposition and some of its own vocal and influential members, it withdrew it hastily.  

Ironically, every political party swears that it is against the politics of defection and is for imposing legal ban on defections.

The Constitution (48th Amendment) Bill 1978 was practically with drawn before it could be introduced. Briefly the Constitution (48th) Amendment Bill, sought to make defections from Political Parties by legislators a reason to disqualify from being member of the legislature. The Bill proposed that in Article 102 of the Constitution for sub-Clause(c) of clause(1) shall be substituted.

Paragraph 2 in the proposed Tenth Schedule lays down as follows:

"Subject to the other provisions of Paragraph 3, a person shall be disqualified on the ground of defection for continuing as a member of a House

(a) If the voluntarily gives up his membership of the political party to which he belongs or

(b) If he votes in such House Contrary to any direction issued by the political party to which he belongs by any person or any authority authorized by it in

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78 Sharma, Mool Chand, Politics of Defections and Democracy (1979) 13 JCPS 328, 331 Also see Mian Ahmad V. State of Jammu and Kashmir, AIR 1982 J&K 26

79 The Bill was attempted to be introduced, in the Lok Sabha on 28 August 1978 by the Education Minister P.C. Chunder (since Law Minister, Shanti Bhusan, was busy in the Rajya Sabha). Leading the opposition to the Bill, Madhu Limaye thumbed the table with these words, "The Janata Party was committed to the legislating against defection but not the destruction of the freedom and Liberties of members of Parliament". He was joined practically by all the opposition parties, including the CPM in opposing the Bill.

80 The Constitution (48th Amendment) Bill 1978 provided for the substitution of sub clause(e) to clause 1 of Article 102 as follows "(e) If he is so disqualified by or under any law made by Parliament, and a person shall be disqualified for continuing as a member of either House of the Parliament if he is so disqualified on the ground of defection under the Tenth Schedule". He has been expelled from such political party within thirty days of such voting on the ground that he so voted.
this behalf, without obtaining the prior permission of such political party, person or authority and he has been expelled from such political party within thirty days of such voting on the ground that he so voted.\textsuperscript{81}

According to paragraph 2 of the proposed Tenth Schedule which was to be substituted by the Constitution (Forty eighth Amendment) Bill.1978. a legislator resigning from his political party or voting against it without prior permission from the party authorities and being, in consequence expelled from it within 30 days will be deemed defector for the purpose of above disqualification clause (a) of paragraph 1 of the Tenth Schedule to the Constitution proposed by the (48\textsuperscript{th} Amendment), Bill defined Political party ‘in relation to a House as follows

(i) An association or body of citizens of India which is registered or deemed to be registered under this schedule(Xth Schedule) with the Election Commission for the purposes of elections to such House, or

(ii) An association or body of members of the House (whether or not such association or body includes other persons) which is recognised by the Chairman or as the case may be, the Speaker of such House as a political party for the purpose of this schedule.\textsuperscript{82}

Para 3 of the proposed Tenth Schedule which was proposed to be substituted by the Constitution (48\textsuperscript{th} Amendment) Bill, 1978 reads as under

“A member of a House shall not be disqualified under Paragraph 2 if he gives up his membership of his original political party and becomes a member of a new political party formed as a result of split in his original political party.

Provided that (i) not less than 25\% of the members of the legislative party concerned or where the strength of such legislative party is less than twenty not less than five members of such party are members of the new political party.

The new political party has been recognized by the Chairman or the case may be, the Speaker of such House or registered with the Election Commission under this Schedule.\textsuperscript{83}

The split cases were exempted and termed as ‘genuine split’ in a party. However a split being defined as the breaking away of not of not less than 25\% of the

\textsuperscript{81} The Constitution (48th Amendment) Bill, 1978.
\textsuperscript{82} Ibid.
\textsuperscript{83} Ibid.
members of the party in the legislature and where a party has lesser than 20 legislators, the split may be affected by breaking away of not less than five members.

The Constitution (32\(^{nd}\) Amendment) Bill, 1973 also provided that the proposed disqualification shall not apply to those cases where a legislator resigns from, or votes against his party by reason of split in the party. Political party has been defined to mean any party classified as a recognized political party under election law or any other party recognized by the Speaker or the Chairman of the House as the case may be, as a political party and consisting of not less than 1/15\(^{th}\) of the total membership of the House.

On making a comparative examination of the two Bills, it becomes clear that the both the Bills envisaged some what similar approach towards the problem of defection. Both the Bills left the independents completely out of the purview of disqualification clauses.

Shri H.N.Kunzru dissent with the Committee on Defection in regard to the distinction as it intended to distinguish between defection and split is a party

“In the course of discussion in the Committee about the members of the legislatures who leave their parties, a distinction was made between at individual member leaving his party and a group separating itself from its party. The Chairman himself expressed the view that a change of party loyalty by a group could not be treated in the same way as similar action by an individual”\(^{84}\)

He further said that:-

“This should be brought out in the report so that the definition of defector may not be so narrow as to treat individuals and group alike. It should be made clear that the members of a party are entitled to leave it when a party follows a course which was not contemplated at the time of the General Election or which they honestly differ from”.\(^{85}\)

Post Fourth General Election period, a considerable part of instability can be directly or indirectly traced to the role of independents and their attempt to bargain. After 1967, elections to the state Assemblies largest number of defectors to various political parties, most of them being to the congress-were contributed by ‘Independents’. Of the 174 “independents” elected to the Assemblies in Bihar,

\(^{84}\) Minute of dissent to the Report of the Committee on Defections 1969.
\(^{85}\) Ibid.
Haryana, M.P., Manipur, Punjab, Rajasthan, U.P. and West Bengal in 1967 elections as many as 90 joined various political parties within a year of their election and played very decisive role in toppling the existing governments and installing new ones.  

A close examination of group defections, ideology or honest programmatic differences have been the least significant motivations. Except in situations of marginal majorities, it is relatively more difficult for a lone defector to bargain with a organized party. After all whether it is one another who crosses the floor or it is a group of members the nature and content of the act is the same and we cannot dub one as defector and the other as the ‘split’ in the party and thus the distinction made by the bills is not valid.

(IV) Election Commission Recommendation on Anti-Defection Law

The Election Commission had expressed its anguish at the unethical practice of defection which adversely affected the stability of the Governments and has sought suitable amendments in the law. It had said-

"The Fourth General Elections of 1967 brought in its trail a wind of swift changes in the political atmosphere of this country. That wind is still blowing sometimes with the velocity of a storm and other times at lower speed. Perhaps in a developing democracy as ours is that is not quite unexpected and that may even be regarded as teething trouble of a healthy growing child."

The Election Commission further observed-

When the results of the Fourth General Elections of 1967 were declared, it was found that the Indian National Congress which had till then have been the dominant political party throughout India had lost its majority in a number of State Legislative Assemblies and its majority in the House of People had also drastically dwindled. This not only resulted in the formation of non-congress governments in a number of State Assemblies forgot the election promises and pledges held out to the electorate at the time of election by and on behalf of parties by whom they were sponsored and started defecting in large numbers in quick succession from their respective parties."

86 supra note 73, p.342
89 Ibid.
It further said:

"The elected representatives forgot that defection and re-defection from one party to another is not paying in the long run, and more often than not it acts as boomerang hitting the person by whom it is restored to. The moral consequences of defection and floor-crossing are sometimes for reaching and serious."⁹⁰

In 1977 Commission made a specific recommendation that defection of legislators from one political party to another should be prohibited by providing that such defection shall result in vacation of seat held by the legislator concerned in Parliament or the State Legislatures, as the case may be.

Commission also wanted that some other disqualification should also result from such defection. The Commission thought that no Amendment to the Constitution would be necessary to achieve the above objective as was sought to be provided in the Constitution (32⁰ Amendment) Bill introduced in 1973 and 1978.

The purpose could be achieved by a suitable Amendment to the Representation of the People Act, 1951 in the part relating to the disqualification by specifying defection as one of the grounds for disqualification of a person to be chosen as, or for being a Member of Parliament or State Legislatures.

In that event the declaration made by the candidate in his nomination paper will be of assistance in the determination of the question of defection of a member from the political party after he has been elected on the ticket of that political party. As in the case of other disqualifications referred to in articles 102 and 191 of the Constitution, the disqualification on the grounds of defection could also be referred to the Election Commission for tendering opinion to the President or the Governor, as the case may be and the President or the Governor, shall act on such opinion tendered by the Election Commission.

The Constitution (Forty eighth Amendment) Bill, 1978 was opposed at the stage of introduction itself both by some ruling party members as well as the opposition as certain features of the Bill did not satisfy them. After some discussion, the motion of introduction of the bill was withdrawn by leave of the House.

In 1982, an alarming picture of political defections was presented by the Jammu and Kashmir High Court in the case of Main Bashir Ahmad Vs. State of

⁹⁰ Ibid.
Jammu & Kashmir. The number of defection as shown in the judgement was 41 in 1977, 57 in 1978, 69 in 1979 and 74 in 1970. What could be the worse political indisciplined and betrayal to the democratic ethics than this.

7. **The Constitution (Fifty-second Amendment) Act, 1985**

After seven years from the lapse of the second Bill, the President of India said in his Address to both Houses of Parliament assembled together on 17 January, 1985\(^2\) that the Government intended to introduce in that session a Bill to outlaw defections. In fulfillment of that assurance, the Government introduced the Constitution (Fifty-second Amendment) Bill in the Lok Sabha on 24 January, 1985. The Statement of Objects and Reasons appended to the Bill stated:

1. *The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. The Bill is meant for out-lawing defections and fulfilling the above assurance.*

2. *The Bill seeks to amend the Constitution provide that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and a nominated member of Parliament or a State Legislature, who is member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent member of Parliament or a State Legislature shall also be qualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seats shall be disqualified if he joins any political party after the expiry of the said period of six months. The Bill also makes suitable provisions with respect to splits in, and mergers of, political parties. A special*

\(^1\) AIR 1982 J&K 26

\(^2\) Immediately after the general election held in December 1984.
provision has been elected as a presiding officer of a House to serve his connections with his political party. The question as to whether a member of a House of Parliament or State Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects.

In order to bring about a national consensus on the Bill, the Prime Minister held prolonged consultations with the leaders of Opposition groups. The Government acceded to the demand of dropping a controversial clause from the Bill relating to disqualification of a member on his expulsion from his political party for his conduct outside the House. Intervening in the debate, Prime Minister Rajiv Gandhi said that the Bill was only “the first step towards cleaning up public life” and that the Government would initiate other reforms in consultation with the opposition.

The Bill was passed by Lok Sabha and Rajya Sabha on 30 and 31 January, 1985, respectively. It received the President’s assent on 15 February, 1985. The Act came into force with effect from 1 March, 1985 after issue of the necessary notification in the Official Gazette.

The Constitution (Fifty-second Amendment) Act, 1985, 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 (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on grounds of defection. The Tenth Schedule *inter alia* provided that:

(i) an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party and nominated member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party;\(^{93}\)

\(^{93}\) Paragraph 2(1) of the Tenth Schedule of Constitution of India
(ii) an independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election;\textsuperscript{94}

(iii) a nominated member of Parliament or a State legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months;\textsuperscript{95}

(iv) no disqualification would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party\textsuperscript{96} or merger of a party in another provided that in the event of a split the group consist of not less than one-third of the members of the legislature party and in case of a merger of not less than two-third of the members of the legislature party concerned;\textsuperscript{97}

(v) no disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to that office of the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State, if he serves his connection with his political party;\textsuperscript{98}

(vi) the question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House; where the question is with reference to the Chairman or the Speaker himself it will be decided by a member of the concerned House elected by it in that behalf;\textsuperscript{99}

(vii) the Chairman or the Speaker of a House has been empowered to make rules for giving effect to the provisions of the Schedule. The rules are required to be laid before the House and are subject to modifications/disapproval by the House;\textsuperscript{100}

\textsuperscript{94} Paragraph 2(2) the Tenth Schedule of Constitution of India.
\textsuperscript{95} Paragraph 2(3) the Tenth Schedule of Constitution of India.
\textsuperscript{96} Paragraph 3 of the Tenth Schedule of Constitution of India. Paragraph 3 omitted by the Constitution ( Ninety-first Amendment ) Act, 2003, s.5( w.e.f.1.1.2004)
\textsuperscript{97} Paragraph 4 of the Tenth Schedule of the Constitution of India.
\textsuperscript{98} Paragraph 5 of the Tenth Schedule of the Constitution of India.
\textsuperscript{99} Paragraph 6(1) of the Tenth Schedule of the Constitution of India.
\textsuperscript{100} Paragraph 8 of the Tenth Schedule of the Constitution of India.
(viii) all proceedings in relation to any question as to disqualification of a member of a House under the Schedule will be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212.\footnote{Paragraph 6(20) of the Tenth Schedule of the Constitution of India.} And
(ix) notwithstanding anything in the Constitution, no court will have any jurisdiction in respect of any matter connected with the disqualification of a member of a House.\footnote{Paragraph 7 of the Tenth Schedule of the Constitution of India. This paragraph has been held by the Supreme court as ultra vires of the of the constitution in their majority opinion in Kihota Hollohon vs. Zachilhu & others, AIR 1993, SC 412}

8. \textbf{Anti-defection Rules under Tenth Schedule}

In exercise of the powers conferred under paragraph 8 of the Tenth Schedule, the Lok Sabha Speaker framed the Members of the Lok Sabha (Disqualification on ground of Defection) Rules, 1985 for giving effect to the provisions of the Tenth Schedule, which came into force \textit{w.e.f.} 18 March 1986. The Rules \textit{inter alia} enjoined a responsibility on the leaders of Legislature Parties in the House to furnish to the Speaker within 30 days after the first sitting of the House or within 30 days after the formation of such legislature party as the case may be, a statement containing the names of members of such legislature party, with other particulars regarding such members as in Form 1 appended to the said Rules, a copy of the rules and regulations/constitution of the political party concerned and where the legislature party has any separate set of rules and regulation/constitution, also a copy of such rules and regulations/constitution. The Leader of the legislature party is also required to inform the Speaker about the changes that might take place in the strength of the party or in its rules, regulations, constitution, etc. The leader of the party or the person authorized by him in that behalf is also required to communicate to the Speaker any instance of a member of the party voting or abstaining from voting in the House contrary to any direction issued by such party person or authority.\footnote{The Members of the Lok Sabha (Disqualification on Ground of Defection ) Rules, 1985,Rule 3}

The question whether a member has incurred disqualification under the Tenth Schedule is to be determined by the Speaker himself or it may be referred by him to the Committee of Privileges for making a preliminary inquiry and submitting a report
to him. In case the Speaker refers the petition to the Committee, he will determine the
question after receipt of the report from the Committee.104

Paragraph 8(3) of the Tenth Schedule provides that any willful contravention
by any person of the provisions of the Members of the Lok Sabha (Disqualification on
ground of Defection) Rules, 1985, might amount to breach of privilege of the House
and will be dealt with as such.

9. **Efforts made for removal of lacunae in the Anti-Defection law**

Provisions of the Tenth schedule were also challenged in various High Courts
of the country as being illegal and unconstitutional. A need for removing lacunae and
shortcomings of the law was, therefore, felt immediately after came into force.

(I) **Dinesh Goswami Committee on electoral reforms (1990)**105

The Commission recommended that

1. Disqualification should be limited to cases where
   (a) a member voluntarily gives up the membership of his political party,
   (b) a member abstains from voting, or votes contrary to the party whip in a
       motion of vote of confidence or motion of no-confidence

2. The issue of disqualification should be decided by the President/ Governor on
   the advice of the Election Commission.

(II) **Halim Committee on Anti-Defection law (1994)**106

1. The words ‘voluntarily giving up membership of a political party’ be
   comprehensively defined;

2. Restrictions like prohibition on joining another party or holding offices in the
government be imposed on expelled members;

3. The term political party should be defined clearly.

(III) **Law Commission recommendation on Anti-Defection Law (170th report)**

The law commission of India made following suggestions for the amendment
of Anti-defection law.107

1. Provisions which exempt splits and mergers from disqualification to be
   deleted.108

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104 The Members of the Lok Sabha (Disqualification on Ground of Defection ) Rules, 1985
Rule 7
105 Submitted on 4 may, 1990
106 Report on “Measures to Promote Harmonious Relation between the Legislatures and
Judiciary” submitted January 1994
107 Law Commission, 170th Report, 1999, under the chairmanship of justice BP Jeevan
Reddy may 199, p. 84-89
2. Pre-poll electoral fronts should be treated as political parties under anti-defection law.\textsuperscript{109}

3. Political parties should limit issuance of whips to instances only when the government is in danger.\textsuperscript{110}

(IV) **National Commission to Review the Working of the Constitution Report (2002)**\textsuperscript{111}

The National Commission to Review the Working of the Constitution under the Chairmanship of Justice M.N. Venkatachaliah in their report submitted to the Government of India in March 2002 had also made recommendations for amendments to Anti-defection law.\textsuperscript{112}, A gist of which is as under:-

1. All defectors whether singly or in groups (under the so called spilts or mergers) should be disqualified from membership forthwith;\textsuperscript{113}

2. All defectors should be debarred from becoming ministers or holding any other paid public office;\textsuperscript{114}

3. The vote cast by a defector to topple a government should not be counted or treated as invalid;\textsuperscript{115}

4. Petitions under the anti defection law should be heard and disposed of not by the presiding officer of the house but by the Election Commission;\textsuperscript{116}

5. The size of council of ministers should be restricted to 10 percent of the popular house.\textsuperscript{117}


In response to the demands made from time to time from various quarters for strengthening the Anti-defection Law on ground that the provisions of the Tenth schedule to the Constitution have not been able to achieve the desired goal of checking defections, as from 1 March 1985 to December 2003 13 members of Lok sabha were disqualified by speaker and 2 members of Rajya Sabha were disqualified.

\textsuperscript{108} Ibid. paragraph. 3.4.7
\textsuperscript{109} Ibid. paragraph. 3.4.8
\textsuperscript{110} Ibid paragraph. 3.4.6
\textsuperscript{111} Set up by Govt. of India Resolution dated 22 February, 2000. Submitted Report on 31 Volume 1, Chapter 4, National Commission to Review the Working of the Constitution Reports, 2002
\textsuperscript{112} Volume 1, Chapter 4, National Commission to Review the Working of the Constitution Reports, 2002
\textsuperscript{113} Ibid.
\textsuperscript{114} Ibid.
\textsuperscript{115} Ibid.
\textsuperscript{116} Ibid.
\textsuperscript{117} Paragraph 4.19, National Commission to Review the Working of the Constitution Reports, 2002
Total 103 members of state legislative assemblies were disqualified under the Tenth Schedule of Indian Constitution till the Constitution (Ninety-first Amendment) Act, 2003. 20 out of 22 cases of split were allowed in Lok Sabha and all 10 cases of split were allowed in Raja Sabha and 68 cases of splits were allowed in state assemblies. 12 claims of merger allowed in Lok Sabha and 13 cases of merger were allowed in Raja Sabha and total 80 claims of merger were allowed in state assemblies till 2 January 2004, and to implement recommendations of above mention commissions and committees, the government introduced in the Lok Sabha on 5 May 2003, the Constitution (Ninety-seventh Amendment) Bill, 2003. The Standing Committee of Home Affairs to which the Bill was referred presented their Report to the Rajya Sabha on 5 December 2003 and it was laid on the Table of Lok Sabha on the same day.

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

The Act omitted the provision regarding splits from the Tenth Schedule to the Indian Constitution and provides that a member of either House of Parliament or of a State Legislature belonging to any political party who is disqualified under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed a minister or hold a remunerative political post for the duration of the period commencing from the date of disqualification till the date on which term of his office as such member expire or where he contests an election to either House of Parliament or Legislature of a state, before the expiry of such period, till the date on which he declared elected, whichever is earlier. The act also lays down that the total numbers of ministers in the council of ministers both at the Union and the State level shall not exceed 15 per cent of the total number of members of the Lower House, provided that the number of ministers in a state shall not be less than twelve.

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120 Section 3, The Constitution (Ninety-first Amendment) Act, 2003
11. **Anti-defection Law in Jammu and Kashmir**

Even before the enactment of the Constitution (Fifty-second Amendment) Act, in 1985, the Jammu and Kashmir Legislature had passed a Bill amending the Jammu and Kashmir Representation of the people Act, 1957, with a view to disqualifying a political defector from being a member of either House of Jammu and Kashmir State Legislature. The Bill passed by both Houses of the Legislature become law with effect from 29th September, 1979. The Act, inter alia provided for disqualification of a member in Legislative Assembly/ Council (a) if he, having been elected as such member, voluntarily gives up his membership of the political party by which he was set up as a candidate in such election or of which he became a member after such election, or (b) if he votes or abstain from voting in such House contrary to any direction or whip issued by such political party or by any person authorized by it in this behalf, without obtaining prior permission of such party or person. After the Constitution (Fifty-second Amendment) Act, the Seventh Schedule\(^{121}\) has since been added to the Constitution of Jammu and Kashmir in the year 1987 which is popularly known Anti-defection Law.

Even after deletion of the spilt provision from the Tenth Schedule after enactment of the Constitution (Ninety-first Amendment) Act, the provision relating to split continues to the exist in the Anti-defection law of Jammu and Kashmir.\(^{122}\)

In Case of Jammu and Kashmir if any question arises as to whether a member of a House has become subject to disqualification under the provision of the law, the question shall be referred for the decision of the Leader of the Legislature Party to which such member belongs and his decision shall be final.\(^{123}\) In case, however, where the question which has arisen is Party, the question shall be referred for the decision of the Speaker or, the Chairman, as the case may be, and his decision shall be final.\(^{124}\) However, if the question which has arisen relates to a member not belonging to any political party, the question shall be referred for the decision of the Speaker or the Chairman, as the case may be, and his decision shall be final.\(^{125}\)

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\(^{122}\) Paragraph 3 Seventh Schedule of the Constitution of Jammu & Kashmir

\(^{123}\) Paragraph 6 of Seventh Schedule of the Constitution of Jammu & Kashmir

\(^{124}\) Ibid.

\(^{125}\) Ibid.
12. **Issues in the Anti Defection Law in India**

The journey of Anti-defection law, through amendment in 2003, has not been satisfactorily aim achieving since 1985. Some technicalities came in the ways. Some were pleaded from different point of views. Whereas others came in the way of the Constitutional wisdom. Some have been resolved through judicial interpretations and some are still urging for reformation. Thus, the law on the point still not a complete code to cure the evil. However, the courts have occasioned to look into curable aspects of the law on the point. As it has been settled through judicial interpretations that, notwithstanding the finality clause in para. 6(1) or the non-obstante clause in para. 7 of the Tenth Schedule of Indian Constitution, the decision of the Speaker under para 6 is open to judicial review by the supreme court and high courts under article 32, 136 226 on ground of jurisdictional errors, e.g. (a) that it is ultra vires, i.e., in contravention of a mandatory provision of the constitution which confers the power on the speaker to make the impugned decision. (b). That it is vitiated by mala fides or colourable exercise of the power, being based on extraneous or irrelevant considerations. (c). That the decision is perverse or on no evidence. (d). that it is violative of the rules of natural justice. The breach of procedural rules, as such, does not constitute rules of natural justice.

There are several issues related to the unfolded aspects of political defection which need to be resolved. Some of them are the output of working of Anti-defection law. Does the law suppress the intra-party debate dissent? Does the law work as a restriction on the representatives to raise their voice regarding the concern of their voters in opposition to party position? Does this law curtail the freedoms of speech of representatives? Whether this law effectively curb rampant horse trading and alleged buying of MLAs and MPs? Does the decision of the speaker carry a question of morality or some external mechanism should come into picture in relation to decision to decision making process on the political defection issues? What is the status in

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126 Kihota Hollohan Vs. Union of India, AIR 1993, SC 412( paras 5,41,85,86,94)
127 Ibid.
128 Ravi S. Malik Vs. Union of India, AIR 1994 SC 1558( paras 4, 18) also see Balchandra L. Jarkiholi & others V. B.S.Yaddyumappa & others, Supreme Court, Civil Appeal no. 4444-4476 Of 2011, date of judgement 13 May,2011, http://judis.nic.in
129 Supra note. 121
130 Ibid
131 Mayawati v. Markendeya Chand, AIR 1998, SC 3340
132 Ibid.
133 Ravi S. Naik V. Union of India, AIR 1994, SC 1558( paras 41 & 20)
either House of Parliament or the State Legislatures of a Member who is expelled from the party which set him/her up as a candidate for election? What is the status of an “unattached” Member in either House of Parliament or in the State Legislatures?

13. Anti-Defection Legislation: A Comparison with other countries

Turning to the countries, which have enacted legislations or framed rules to deal with defections, an attempt has been made in the following paragraphs to give information in brief under certain parameters and thereby elucidate the position prevalent in different countries comparatively.

(i) Voluntarily Giving up Membership of the Party

The Anti-defection law in India inter alia provides that an elected member of Parliament or a State Legislature, who has been elected as a candidate set up by a political party would be disqualified for being a member of the House, on the ground of defection if he voluntarily gives up his membership of such political party. The law on the subject passed by Bangladesh Parliament, in 1980, provides inter alia that a member of Parliament shall vacate his seat if he resigns from the political party on whose ticket he contested the election. In Belize, the law, which came into force in January 2001, provides that a person ceases to be a member by reason of crossing the floor.

In Ghana, the Constitution inter alia provides that a member of Parliament shall vacate his seat in Parliament if he leaves the party of which he was a member at the time of his election to Parliament, to join another party or remains in Parliament as an independent member.134

In Guyana, has a system of proportional representation, a constitution amendment Act was brought about in 2000.135 In Kenya, if a member of the National Assembly resigns from the parliamentary party he belongs to, he shall vacate his seat forthwith, unless in the meantime that party has ceased to exist as a parliamentary party or he has resigned his seat.

In Lesotho, there has been an amendment136 to the Electoral Act. However, the law is not applicable to the members having constituency seats. In Malawi, the

134 Article 97(1) of the Ghana Constitution
135 Providing for disqualification of those members who declare that they would not support the list from which their names were extracted, or abstain from supporting the list or declare support for another list.
136 Provides for disqualification of a proportional representation member if he crosses the floor or resigns from the party, which had supported his candidature.
practice is that the Speaker declares vacant the seats of those members who have voluntarily ceased the membership of their party or joined another party or association or organization whose activities are political in nature. The Parliament of Mozambique has a law\textsuperscript{137} to prevent the phenomenon of defection. Under the law, a Deputy loses his seat when during that particular Legislature, he becomes member or carries out duties of another party, other than the party through which he was elected.

In New Zealand, where floor-crossing is called t after the election and formation of a coalition Government in 1999, the Electoral (Integrity) Amendment Act 2001 was passed, which came into force on 22 December 2001. The law inter alia provides that a member's seat in Parliament falls vacant if he ceases to be a parliamentary member of the political party for which he was elected. It is a temporary law and will automatically expire at the time of general election due in 2005.

In Nigeria, a member of the Senate or the House of Representatives shall vacate his seat if being a person whose election to the House was sponsored by a political party, he joins another party before the-expiration of the period for which that House is elected.\textsuperscript{138} The Constitution of Sierra Leone provides that a member of Parliament shall vacate his seat in Parliament if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament. Constitution of the Republic of Singapore provides that the seat of a member shall become vacant if he ceases to be a member of, or is expelled or resigns from the political party for which he stood in the election.\textsuperscript{139}

In Papua New Guinea, an Anti-defection legislation called the Integrity of Political Parties and Candidates Law which came into force for the 2002 election restricts the freedom of politicians to change party affiliation. The law also envisages penalties if members of the Legislature leave their party, with which they were aligned when first elected and join another party or become independent. If the member changes the party, he is required to face the ‘leadership tribunal’\textsuperscript{140} which decides whether the grounds for resignation are valid. Under the law, valid resignation is possible when the Party has breached its own constitution or when it has been

\textsuperscript{137} Law 2/95 of 8 May 1995
\textsuperscript{138} In Nigeria, defection is known as ‘carpet crossing’.
\textsuperscript{139} Article 46(2)(b) of the Constitution of the Republic of Singapore
\textsuperscript{140} Ombudsman Commission
declared insolvent. If the tribunal rules against the member, a by-election must be held.

In Pakistan also, Anti-defection Law is in existence and there have been instances of political defections. The Constitution of Pakistan lays down the grounds of defection on which a member of a parliamentary party in a House is disqualified. These, inter alia, are if he resigns from membership of his political party or joins another parliamentary party.\footnote{The Constitution of Pakistan vide article 63A}

In Samoa, the Electoral Amendment Act 2005\footnote{Which came into force on 1 April 2005 amended Part HA of the Principal Act by inserting Section 15F.} which inter alia provides that a candidate elected as a member, where the ballot paper for such election cites the candidate’s membership of a political party, shall sit in the Legislative Assembly as a member of that political party during the term for which the Candidate was so elected. Where the ballot paper for such election cites the candidate’s membership of a political party and upon election, but prior to taking the oath of allegiance, it appears that such political party does not have sufficient membership to be recognized as a political party in the Legislative Assembly, under Standing Orders, the candidate, may, prior to taking the oath of allegiance, join another political party or become an independent in the manner provided by Standing Orders and thereafter the elected candidate shall sit in the Legislative Assembly as a member of such other political party or as an independent, as the case may require, during the term for which the candidate was so elected. However, if a candidate resigns subsequently from such political party and becomes a member of another political party during the term for which the candidate was so elected, the seat of such candidate as a member of Parliament shall become vacant and such candidate shall be disqualified from holding such seat.

In South Africa, the Constitution provides inter alia that a person loses membership of the National Assembly if he ceases to be a member of the party that nominated him as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A. Similarly, Section 106 as amended provides inter alia that a person loses membership of Provincial Legislature if he ceases to be a member of the party that nominated him as a member of the Legislature, unless that member has become a member of another party in accordance...
with Schedule 6A. Schedule 6A inter alia lays down a mechanism of window period which provides for retention of membership of National Assembly or provincial legislature, after a change of party membership, merger between parties, subdivision of parties and subdivision and merger of parties. In terms of the legislation, the time of the 15-day window periods are from the first to the fifteenth day of September in the second year following the date of an election of the Legislature and from the first to the fifteenth day of September in the fourth year following the date of an election of the Legislature.

It must, however, be noted that in order to retain the membership of the Legislature in the event of change of party membership, merger, subdivision and subdivision and merger of parties, a member of a legislature who becomes a member of a party (the new party) other than the party which nominated that person as a member (the nominating party), whether the new party participated in an election or not, remains a member of that legislature if that member, whether by himself or herself or together with one or more other members who, during the window period ceased to be members of the nominating party, represents not less than 10 per cent of the total number of seats held by the nominating party in that legislature.

In Sri Lanka, the Constitution, a member who ceases to be a member of his political party or independent group by way of resignation, expulsion or otherwise, loses his seat in the Legislature upon the expiration of a period of one month from the date of his ceasing to be such member.

Constitution of Tanzania provides that a member of the National Assembly shall cease to be a member and shall vacate his seat in the National Assembly if he ceases to be a member of that political party to which he belonged when he was elected or appointed as a member of Parliament.

In Trinidad and Tobago, the Constitution, where a member resigns from or is expelled by a political party, the Leader of the concerned party in the House of Representatives is required to inform the Speaker about the same in writing. After being so informed, the Speaker at the next sitting of the House makes a declaration.

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143 Section 47 of the South Africa Constitution, as amended by Act No.2 of 2003
144 The Act also made a provision for the members to change their party allegiance during the first 15 days immediately following the date of commencement of the Act.
145 Sri Lanka, Article 99(13) of the Constitution
146 Article 71(1)(e) of the 1977 Constitution of Tanzania
147 Trinidad and Tobago, Section 49A(1) of the Constitution
about the resignation/expulsion of the member. A member who has been declared as having resigned from or been expelled by the party, has a right to institute legal proceedings challenging his resignation/expulsion within 14 days. If he does not do so, he shall vacate his seat at the end of the said period of 14 days. If within the stipulated period, the concerned member institutes legal proceedings, the is not required to vacate his seat until the proceedings instituted by him are withdrawn or the question has been finally determined by a decision upholding the resignation or expulsion. However, the Standing Orders of the House of Representatives had not been amended to give effect to this section of the Constitution till April 2002.

In Uganda, the Constitution\textsuperscript{148} provides that any member of Parliament who leaves the political party of which he stood as a candidate for election to Parliament and joins another Party or remains in Parliament, as an independent member shall vacate his seat. In the Zambian Parliament also a member of the National Assembly who becomes a member of a political party other than the party of which he was an authorized candidate when he was elected to the National Assembly loses his seat in the Parliament.

In Zimbabwe if a member, elected from one of the 120 common roll constituencies, ceases to belong to his political party and the party writes to the Speaker declaring that they have since parted ways with the member, the member ceases to be the member of the Legislature.

\textbf{(ii) Violating Party Directions/Whip}

A member of Parliament or a State Legislature in India also comes under the rigour of anti-defection law if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been condoned by such political party, person or authority with in fifteen days from the date of such voting or abstention. Similarly, in Bangladesh the Constitution provides that a member of Parliament shall vacate his seat if he votes in Parliament against the Party.

\textsuperscript{148} Uganda, article 83(1,g) of the Constitution
The defection law as contained in the Constitution of Pakistan\textsuperscript{149} inter alia provides that a member of a parliamentary party in the House will be disqualified if he votes or abstains from voting in the House contrary to any direction issued by the parliamentary party to which he belongs, in relation to election of the Prime Minister or the Chief Minister, a Vote of Confidence or a Vote of No confidence, or a Money Bill.

In Papua New Guinea, the anti-defection law envisages that members of Parliament elected with party endorsement must vote in accordance with their party’s position on key issues including the election of a Prime Minister, the Budget, Votes of no-confidence, and constitutional amendments. In Sierra Leone, a member is required to vacate his seat for sitting and voting with members of a different party. Interestingly, in Malawi, the Constitution\textsuperscript{150} provides that all members of parties shall have the absolute right to exercise a free vote in any and all proceedings of the National Assembly and a member shall not have his seat declared vacant solely on account of his voting in contradiction to the recommendations of his political party in the National Assembly.

(iii) Split/Merger

In India, the anti-defection law as contained in the Constitution\textsuperscript{151} provided that no disqualification would be incurred in cases where split in a party or merger of a party with another was claimed provided that in the event of a split in the Legislature Party not less than one-third of its members decided to quit the party and in the case of a merger the decision was supported by not less than two-thirds of the members of the Legislature Party concerned.

(iv) Split Provision Deleted in India

The provision relating to split was severely criticized in India on the ground that while individual defection was punished, collective defection was condoned. Therefore, the provision relating to split has been deleted.\textsuperscript{152}

In Bangladesh, there is no specific provision for splits and mergers in the Constitution or in any law or Rules of Procedure. In Ghana, a merger of parties at the

\textsuperscript{149} Article 63A of the Constitution of Pakistan

\textsuperscript{150} Malawi, Section 65(2) of the Constitution

\textsuperscript{151} The Constitution (Fifty-second Amendment) Act, 1985

\textsuperscript{152} By the Constitution (Ninety-first Amendment) Act 2003.
national level sanctioned by the Constitution or membership of a coalition government of which his original party forms part shall not affect the status of a member of Parliament.

In Nigeria, exemption is given in cases of splits and mergers.\textsuperscript{153} In Sierra Leone, both collective as well as individual defections are penalized. In South Africa, as mentioned earlier, following the laid down conditions and procedure, a party could merge, sub-divide or sub-divide and merge only once by written notification to the Speaker during the 15-day window period. There are certain countries\textsuperscript{154} in which there are no legal provisions for splits and mergers. In Mozambique, the law does not formally recognize splits within the parties or parliamentary coalitions. In Zambia, split amounts to a change in party affiliation and is dealt with as such under the provision of law.

(v) **Independent and Nominated Members**

Yet one more important dimension of anti-defection law pertains to the status of independent and nominated members in the event of their joining a political party. In India an independent member of Parliament or a State Legislature is disqualified if he joins any political party after his election. A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat in the House, is disqualified if he joins any political party after the expiry of the said period of six months.

In Bangladesh, if a person after being elected a member of Parliament as an independent candidate joins any political party, he is deemed to have been elected as a nominee of that party. There is no provision of nominated members in Bangladesh Parliament. In Ghana and Sierra Leone also a member of Parliament shall vacate his seat in Parliament if he was elected as an independent candidate and joins a political party.

In Belize and Guyana, there are no provisions in respect of independent and nominated members. In Mozambique if a Deputy resigns or is expelled from his party or parliamentairy bench and he remains not affiliated to another party, he becomes an independent

\textsuperscript{153} However, there is no prescribed number as to what constitutes a split or a merger. In Zimbabwe, no exemption is given in cases of splits and mergers.

\textsuperscript{154} In Belize, Guyana, New Zealand, Sri Lanka, Trinidad and Tobago.
In Lesotho, Malawi and New Zealand, independent members would not lose their seats if they join any political party after election. In Papua New Guinea, a member shall vacate his seat in Parliament if having been elected as an independent candidate, he joins a political party. In Samoa, a candidate elected as a member, where the ballot paper for such election cites the candidate as independent (meaning the candidate is not a member of political party at the time of election), may, prior to taking the oath of allegiance, join a political party in the manner provided by Standing Orders and thereafter such elected candidate shall sit in the Legislative Assembly as a member of that political party during the term for which the candidates was so elected. In Singapore also, a nominated members seat becomes vacant if the member stands as a candidate for any political party in an election or if he is elected a member of Parliament for any constituency.

In Sri Lanka, independent candidates cannot contest individually, but they can contest under the symbol of an independent group and they would be subject to the provisions of anti-defection law. In Trinidad and Tobago there are no provisions with respect to independent or nominated members. In Uganda, any member of Parliament who leaves the political party of which he stood as a candidate for election to Parliament and joins another party or remains in Parliament as an independent member shall vacate his seat. In Zambia, if an independent member joins a political party, he automatically loses membership. In Zimbabwe, independent or nominated members of Parliament are not debarred from joining a political party of their choice after election or nomination.

(vi) Expelled Members

The position with regard to members who have been expelled from their original political parties differs from country to country. The anti-defection law in India does not state the position and status of members who are expelled from their political parties. Such a member, however, continues to be a member of the House and is seated separately from the bloc of seats earmarked for his original political party. In Bangladesh, if a member is expelled from his political party, the ‘dispute’ is referred to the Election Commission. In Lesotho, in case a member is expelled from his political party, he is not disqualified from the membership of the House. He

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155 In Kenya, a member of the National Assembly having accepted appointment as a nominated member of a political party shall vacate his seat.
156 Election Commission decision is final and no appeal can be made against it.
continues to remain a member of the House belonging to the same party but is seated separately in the House as is the case in India. In Belize and Guyana, the Constitution does not have any provisions dealing with the members expelled from their parties. In Malawi, a member who is expelled by his party for reasons other than crossing the floor does not lose his seat. He remains a member but sits on a row of seats reserved for independents. In Mozambique, if a Deputy is expelled from his party and he remains not affiliated to another party, he becomes an independent. He keeps his seat and status as Deputy of Parliament for the full tenure of the Legislature as a representative of his voters.

In New Zealand, a member’s seat falls vacant if he is expelled from the membership of his political party. In Sierra Leone, the practice is that when a member is expelled from the party, the Speaker sets up a committee which enquires into the matter and reports to the Speaker and the Speaker takes a view in the matter. The Speaker’s decision is, however, appealable in a Court of law. In Singapore and Sri Lanka, if a member is expelled from his party, he will lose his seat in Parliament: In Zambia, where the Speaker receives intimation from a political party regarding the expulsion of a member from the party, he has the mandate of the law in such a situation to inform the President and Electoral Commission that a vacancy has occurred in the membership of National Assembly.

In Zimbabwe, the circumstances under which a member can be deemed to have ceased to belong to his party are not defined which means it can be through resigning, being expelled or defection, thus leaving a lot of discretion with the party and the member concerned. In such eventually, the seat of the member is declared vacant and an election has to be held.

(vii) Exempting the Presiding Officer

In order to facilitate the neutrality of the Presiding Officers, they need to be exempted from the rigour of the law if they sever their political connection with their original political party after election to the chair. Under the anti-defection law in India, a special provision has been made in respect of Presiding Officers and Deputy Presiding Officers which enables them to sever their connections with the political party they originally belonged to, without incurring any disqualification. They can
rejoin the political party after laying down the office.\textsuperscript{157} In Belize, the Speaker is also subject to disqualification as a member of the House of Representatives if he crosses the floor. In Kenya, exemption is given to a member who is elected as Speaker.\textsuperscript{158} In Mozambique, the Speaker and the Deputy Speaker of the Assembly are not required to exercise any impartiality or dissension from the political parties they belong to. Further, they have the right to vote, which in principle, would be effected in compliance with the party through which they were elected.

In New Zealand, Presiding Officers (unless originally elected as independent members) are not treated differently from other members of their parliamentary party. In Pakistan also the defection law as contained in the Constitution\textsuperscript{159} is not applicable to Chairman or the Speaker of a House. In Zimbabwe, the question of defection or change of party affiliation in the case of the Speaker does not arise because the Speaker is not a member of the Assembly. Constitution of Zimbabwe\textsuperscript{160} provides that there shall be a Speaker of the National Assembly who shall be elected by the members of the Assembly from amongst persons who are qualified to be elected as members of the Assembly but are not members of the Assembly.

\textbf{(viii) Presiding Officer as Deciding Authority}

While in several Parliaments Presiding Officers are competent and the final authority to take a decision with regard to defection cases, in some countries an appeal can be made to the Court or the Election Commission or some other bodies. The position in India is that the Chairman or the Speaker of the respective House determines the question as to whether a member of a House of Parliament or a State Legislature has become subject to disqualification. The Presiding Officers, however, cannot take any initiative suo moto. It has to be on the basis of a petition to be filed by a member. Where the question is with reference to the Chairman or the Speaker himself, a member of the concerned House, elected by it, in that behalf, will decide it. Although anti-defection law in India envisaged that no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under the law, the Supreme Court of India has held this provision, which bars the jurisdiction of courts in such matters, as ultra vires. Hence, does not state the

\textsuperscript{157} Under the relevant law in Bangladesh, Guyana, Nigeria, Singapore and Sri Lanka no such provision for exemption is available to the Speaker or the Deputy Speaker.
\textsuperscript{158} The member does not attract the provision relating to the law in this regard.
\textsuperscript{159} Article 63A of the Pakistan Constitution
\textsuperscript{160} Article 69(1) of the Constitution of Zimbabwe
position and status of members who are expelled from their political parties. Such a member, however, continues to be a member of the House and is seated separately from the bloc of seats earmarked for his original political party. In Bangladesh, if a member is expelled from his political party, the ‘dispute’ is referred to the Election Commission whose decision is final and no appeal can be made against it. In Lesotho, in case a member is expelled from his political party, he is not disqualified from the membership of the House. He continues to remain a member of the House belonging to the same party but is seated separately in the House as is the case in India.\textsuperscript{161} In Malawi, a member who is expelled by his party for reasons other than crossing the floor does not lose his seat. He remains a member but sits on a row of seats reserved for independents. In Mozambique, if a Deputy is expelled from his party and he remains not affiliated to another party, he becomes an independent.\textsuperscript{162}

In New Zealand, a member’s seat falls vacant if he is expelled from the membership of his political party. In Sierra Leone, the practice is that when a member is expelled from the party, the Speaker sets up a committee which enquires into the matter and reports to the Speaker and the Speaker takes a view in the matter. The Speaker’s decision is, however, appealable in a Court of law. In Singapore and Sri Lanka, if a member is expelled from his party, he will lose his seat in Parliament. In Zambia, where the Speaker receives intimation from a political party regarding the expulsion of a member from the party, he has the mandate of the law in such a situation to inform the President and Electoral Commission that a vacancy has occurred in the membership of National Assembly.

In Zimbabwe, the circumstances under which a member can be deemed to have ceased to belong to his party are not defined which means it can be through resigning, being expelled or defection, thus leaving a lot of discretion with the party and the member concerned. In such eventually, the seat of the member is declared vacant and an election has to be held.

\textbf{(ix) Time Limit}

Under the anti-defection law in India, no time limit has been stipulated for deciding the cases relating to defection. There is a feeling in some quarters that there should be a reasonable time frame within which decisions under the anti-defection law in India could be made.

\textsuperscript{161} In Belize and Guyana, the Constitution does not have any provisions dealing with the members expelled from their parties.

\textsuperscript{162} He keeps his seat and status as Deputy of Parliament for the full tenure of the Legislature as a representative of his voters.
law should be given. Unlike India, in Bangladesh, the Speaker shall, within thirty
days after a dispute has arisen, prepare a statement and send it to the Election
Commission to hear and determine the dispute. Where a dispute has been referred to
the Election Commission by the Speaker for hearing and determination, the
Commission shall, unless it is of opinion that a reference on any point regarding the
dispute is required to be made to the Speaker, communicate, within fourteen days of
the receipt of the statement, the statement to the parties to the dispute asking them to
submit statements in writing, if any, on the dispute within such time as may be
specified by it. 163 The position in Belize is that where a person is subject to
disqualification for crossing the floor, the Leader of his party in the House of
Representatives shall, within seven days of such crossing of the floor, notify the
Speaker in writing of such member crossing the floor. Upon receipt of the notice the
Speaker shall, if satisfied, make a declaration at the next sitting of the House of
Representatives after receiving the notice that the member has ceased to be a member
by reason of crossing the floor. The member may, within 21 days of making the
declaration by the Speaker regarding disqualification, appeal against the declaration to
the Supreme Court whose decision on the matter shall be final.

In New Zealand, when a member is expelled, he is given 21 working days
time to respond and after considering the response (if any), at least two-thirds of the
parliamentary members of that party shall agree that the leader should give notice to
the Speaker that the member has been expelled from the party.

In Pakistan upon receipt of the declaration from the Head of the Parliamentary
Party addressed to the Presiding Officer regarding defection of a member, the
Presiding Officer of the House shall, within two days, refer the declaration to the
Chief Election Commissioner, who shall lay the declaration before the Election
Commission for its decision thereon confirming the declaration or otherwise within
thirty days of its receipt by the Chief Election Commissioner. Any party aggrieved by
the decision of the Election Commission may prefer an appeal to the Supreme Court
within thirty days and the Court shall decide the matter within three months.

In Sri Lanka, where a member of Parliament ceases by resignation, expulsion -
or otherwise, to be a member of a recognized political party or independent group on

163 The Election Commission decides the case and communicates its decision within one
hundred and twenty days of receipt of the statement. The decision of the Election
Commission is final and no appeal lies against such decision.
whose nomination paper his name appeared at the time of his becoming such member of Parliament, his seat shall become vacant upon the expiration of a period of one month from the date of his ceasing to be such member. As mentioned earlier, in Trinidad and Tobago, a member who has been declared as having resigned from or been expelled by the party, has a right to institute legal proceedings challenging his resignation or expulsion.\footnote{164} If within the stipulated period of 14 days, the concerned member institutes legal proceedings challenging his resignation or expulsion, he is not required to vacate his seat until the proceedings instituted by him are withdrawn, or the question has been finally determined by a decision upholding the resignation or expulsion.

**Review**

Traditionally, phenomenon of defection is known as ‘floor crossing’ which had its origin in the British House of Commons where a legislator changed his allegiance when he crossed the floor and moved from the Government to the opposition side, or vice versa. In the early stages of their parliamentary struggles for the political power in the United Kingdom, members resorted to deflections frequently and even in large numbers. William Gladstone, regarded as the “grand old man” of British liberalism, began his Parliamentary career as a Conservative Member when he was elected to Parliament in December 1832. Indian politics has been no exception to this phenomenon of deflections. In fact, the history of deflections in India can be traced back to the days of Central Legislature when Shri Shyam Lal Nehru, a member of Central Legislature changed his allegiance from Congress Party to British side. To cite one more instance, in 1937 Shri Hafiz Mohammed Ibrahim, who was elected to the Uttar Pradesh Legislative Assembly on the Muslim League ticket defected to join Congress. Generally speaking, the rationale behind enacting an anti-defection law, providing for punitive measures against a member who defects from one party to another after election, is that it is aimed at ensuring stability especially in a parliamentary form of government. The politics of defections have been a part of

\footnote{164 However, if within 14 days of such a declaration by the Speaker, the concerned member does not challenge the allegation of his resignation or expulsion, he shall vacate his seat at the end of the said period of 14 days. If within the stipulated period of 14 days, the concerned member institutes legal proceedings challenging resignation or expulsion, he is not required to vacate his seat until the proceedings instituted by him are withdrawn, or the question has been finally determined by a decision upholding the resignation or expulsion, he shall vacate his seat at the end of the said period of 14 days.}
Indian political parties even before the 1967 general elections. In 1948, the Congress Socialist Party left the Congress party and directed all its members to resign their seats in the assemblies and seek re-election. But this ideal could not become a precedent. In 1950, twenty three MLAs defected from the Congress Party and formed the Jana Congress in Uttar Pradesh, Again in 1958 some ninety eight MLAs openly defied the government which led to the fall of the Sampurnanand Ministry. The Praja Socialist Party(PSP) is good case study of defections. During March 1967 to March 1971 some thirty two Governments were toppled.

Constitution (Thirty-second Amendment) Bill, 1973 was introduced during the Fifth Lok Sabha on 16 May 1973. The Bill provided for disqualification of a member from continuing as a member of either House of Parliament, if he voluntarily gave up membership of his political party which sponsored him as a candidate at elections or if he without prior permission voted or abstained from voting in the House contrary to any direction issued by the political party to which he belonged. On 13 December 1973, a motion for reference of the Constitution (Thirty-second Amendment) Bill, 1973 to a Joint Committee of the Houses of Parliament was adopted in the Lok Sabha. On 17 December 1973, the concurrence motion in this respect was adopted in the Rajya Sabha. The Joint Committee of the Houses of Parliament became defunct upon dissolution of Fifth Lok Sabha on 18 January 1977. On 28 August 1978, another attempt was made in this direction by bringing forward the Constitution (Forty-eighth Amendment) Bill, 1978 in Lok Sabha. The Constitution (48th Amendment) Bill 1978 was practically with drawn before it could be introduced.

Finally the Constitution (Fifty-second Amendment) Act, 1985, 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 (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on grounds of defection.

For removing lacunae from the Tenth Schedule the Government introduced in the Lok Sabha, on 5 May 2003 the Constitution (Ninety-seventh Amendment) Bill, 2003. The Parliament passed the Bill on 18 December 2003. The Act omitted paragraph 3 dealing with split provisions from the Tenth Schedule to the Constitution and made consequential changes in paragraphs 1 and 2.