ANTI-DEFECTION LAW IN INDIA AND THE COMMONWEALTH

G.C. MALHOTRA

LOK SABHA SECRETARIAT

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FOREWORD

Political defections among legislators have been a cause of concern in democratic political systems the world over, more so in parliamentary polities where the stability of the government is dependent on the support of the Legislature Party or coalition of parties. Political defections betray the mandate of the electorate, the fundamentals of a party system and lead to political instability. That being so, different countries have either evolved conventions or framed laws and rules to deal with political defections.

The Indian polity has also had to contend with the menace of political defections time and again, bringing in its trail political instability, both at the Centre and in the States, on several occasions. It was against this backdrop that the anti-defection law as envisaged in the Constitution (Fifty-second Amendment) Act, 1985 was passed. The Act sought to curb individual defections in the Legislatures by providing for disqualification of the defecting member while it allowed splits and mergers of political parties under certain conditions. The operation of the provisions of the Act over the years brought to the fore many grey areas in the law. This led to demands from varied quarters to review the law.

The Dinesh Goswami Committee on Electoral Reforms, the Law Commission of India and the National Commission to Review the Working of the Constitution also recommended a review of the anti-defection law. The issues arising out of the decisions given by different Presiding Officers and the interpretation of the law by various courts were discussed at the Conferences of Presiding Officers of Legislative Bodies in India as well. In view of the near unanimity among the Presiding Officers for a review of the law, the then Speaker of Lok Sabha and Chairman of the

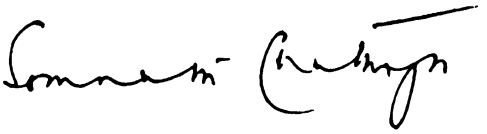
Conference, Shri G.M.C. Balayogi constituted in October 1998 a Committee of Presiding Officers headed by the Speaker of the West Bengal Legislative Assembly, Shri Hashim Abdul Halim, to go into different aspects of the matter. The Committee presented its Report in February 2003 recommending *inter alia* that the provisions relating to splits and mergers be deleted from the Tenth Schedule; the terms 'voluntarily giving up membership' and 'political party' be defined; and that a time frame be laid down for decisions on the anti-defection cases.

In December 2003, the Parliament passed the Constitution (Ninety-first Amendment) Act, omitting the provision relating to splits from the Tenth Schedule to the Constitution. The Act further provided that a member of Parliament or of a State Legislature belonging to any political party who is disqualified under the provisions of the Tenth Schedule shall also be disqualified for being appointed as a Minister or for holding a remunerative political post for the duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to either House of Parliament before the expiry of such period, till the date on which he is declared elected, whichever is earlier.

Any living law has to be dynamic to respond to the changing needs of the times. The efficacy of the amended anti-defection law will also be put to test in the years ahead. In such a scenario, a comparative understanding of the provisions of the anti-defection law in different countries will be of help in addressing the concerns of Presiding Officers, legislators, and others. In this context, the present volume compiled by the learned Secretary-General of Lok Sabha, Shri G.C. Malhotra, putting together the provisions of the anti-defection law in various Commonwealth Parliaments, the summaries of cases under the Tenth Schedule in the Indian Parliament and State Legislatures, the text of important decisions of Presiding Officers and extracts from some selected judicial pronouncements will be of great value in taking a holistic view in the matter.

As Secretary-General of Lok Sabha, Shri G.C. Malhotra has been assisting successive Speakers in dealing with defection related cases. He was also the Secretary to the Halim Committee of Presiding Officers of Legislative Bodies constituted in 1998 to review the anti-defection law. He has put his vast experience and knowledge of the subject to effective use in this volume. I commend Shri Malhotra and his dedicated team of officers for the good work they have done in bringing out this volume.

I am sure, the volume will be of use to all concerned, particularly the Presiding Officers, jurists, parliamentary officials, researchers and academics.



New Delhi **(SOMNATH CHATTERJEE)**
March, 2005

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PREFACE

Political defection or shifting of party allegiance by legislators for varied reasons is a problem, which is being faced by many parliamentary democracies of the world today. Parliaments have attempted to tackle the problem of defection, which is also referred to variously as *floor-crossing, carpet-crossing, waka-jumping,* etc. in a manner best suited to them, consistent with their native realities. While some Parliaments deal with political defection with the help of conventions, others cope with it through constitutional or legal provisions and rules of procedure. Some countries like India, Bangladesh, South Africa and New Zealand have enacted specific legislations including amendment of their Constitutions in this regard. Yet, defections by legislators continue to persist in varying degrees in many Parliaments sometimes even threatening the stability and eventually leading to the fall of Governments. For example, in Sri Lanka on two occasions, once in 1964 and later in 2001, Governments fell due to defections. Governments have also fallen elsewhere in the world, including the United Kingdom where there is no Anti-defection Law, due to defections or split in a political party.

In India, although political defections did occur even during the pre-Independence days, and more particularly since the 1960s onwards, the emergence of coalition politics in States added a new dimension to the problem, threatening political stability in the country. This set in motion prolonged deliberations in various fora for curbing the increasing incidence of defections. It was against this backdrop that in 1985, through the Constitution (Fifty-second Amendment) Act, the Tenth Schedule, popularly known as the Anti-defection Law, was added to the Constitution of India. The Tenth Schedule stipulated certain provisions as to disqualification of members of Parliament and State Legislatures on the ground of defection and provided for exemptions in cases of split and merger of political parties. In pursuance of provisions of the Tenth Schedule, the Members of Lok

Sabha (Disqualification on Ground of Defection) Rules, 1985 were framed which came into force on 18 March 1986. Subsequently, the State Legislatures also framed Rules in this regard to enforce the law.

The Anti-defection Law in India has been in operation for about 20 years now. Even after the Law came into operation, Governments have fallen in some States due to political defections. For instance in Goa in 1989, in Sikkim in 1994 and in Arunachal Pradesh in 1999 and in 2003, Governments fell because of floor crossing.

During the period of two decades, a large number of cases pertaining to disqualification of members and splits/mergers of Legislature parties in Parliament and State Legislatures in India were decided by the Presiding Officers. While the law has acted as a deterrent to discourage political defections amongst legislators, the Presiding Officers have often experienced considerable difficulty in applying its provisions in their spirit and content. Therefore, a unanimous view in favour of reviewing the law emerged. As the first step, through the Constitution (Ninty-first Amendment) Act, 2003, the provision regarding splits was omitted from the Tenth Schedule to the Constitution. The Act also envisaged penalty to discourage defection by debarring the defecting legislators from holding Ministerial or remunerative political posts unless re-elected to the Legislature.

The large number of defection related cases, various issues involved in them, decisions of different Presiding Officers and judgements of the Courts, etc. did generate considerable debate over the years in legislative, legal, media and academic circles on all these matters. In this context, it was felt that it would be worthwhile to chronicle all information at one place for a comprehensive study of the subject. It was in this context that this study on Anti-defection Law in India was conceived. Soon thereafter, work relating to the project was started and attempts were made to collect and collate information on the subject available with Lok Sabha Secretariat. The Rajya Sabha Secretariat and all the State Legislature Secretariats were also requested to send relevant material in this regard.

While the work relating to the project was in progress, the Speaker of Tanzania and the then Chairman of the Executive Committee of the Commonwealth Parliamentary Association (CPA), Mr. Pius Msekwa during the informal discussion on the subject with the then Speaker of Lok Sabha, Shri G.M.C. Balayogi and me at the Sixteenth Conference of Commonwealth Speakers and Presiding Officers in Kesane, Botswana, in 2002 made a suggestion to broaden the scope of the project by including therein information about the anti-defection cases and laws in the Commonwealth countries.

The Secretaries-General/Clerks of 52 Commonwealth (national) Parliaments

were thereafter requested to provide information relating to political defections and anti-defection laws in their Parliaments *inter alia* in the form of replies to a Questionnaire on political defections, drafted for the purpose. Subsequently, a Questionnaire was also circulated among the Secretaries-General/Clerks participating in the Inter-Parliamentary Union (IPU) Conference held in Mexico in April 2004. Information about 65 world Parliaments, particularly those of the Commonwealth Parliaments, included in the study, is largely based on the responses to the Questionnaires received from them.

The study shows that in Lok Sabha in 16 cases, 13 members were declared disqualified. Of these, four members who were disqualified during the Tenth Lok Sabha filed writ petitions in the High Court and were granted stay on the order of the Speaker till the disposal of the writ petitions. The Lok Sabha was dissolved before the disposal of the writ petitions, and therefore, they continued to be members of the House till the dissolution of the House. Hence in net effect, only nine members actually stood disqualified. As many as 22 claims for splits and 13 claims for mergers were made in the Lok Sabha out of which 20 claims for splits and 12 for mergers were allowed. In the case of two claims for splits, no decision could be taken due to dissolution of the Lok Sabha. One merger was not permitted.

In Rajya Sabha, petitions for disqualification of two members were filed, as a consequence of which both the members were disqualified. There were 10 claims for splits and 13 claims for mergers which were allowed.

As per information received from the State Assemblies, there have been 97 cases seeking disqualification of members. Out of these, 46 cases were allowed, 41 disallowed and 10 cases were rendered infructuous. In the 46 cases allowed, a total of 113 MLAs were declared disqualified. As regards claims for splits and mergers, all the 68 claims for splits and 81 of mergers were allowed. In State Legislative Councils, seven claims each for splits and mergers were allowed.

Besides information relating to disqualification, split and merger cases in India, the volume also contains country summaries in respect of 40 Commonwealth Parliaments.

The study on the whole gives an insight into the manner in which various countries have sought to address issues relating to political defections. It comprises five Chapters. Chapter 1 deals with the 'Genesis of the Law', highlighting the etymology of the term 'defection' and the imperatives of its enactment, particularly in India. Chapter 2 contains an overview of the laws and experience of the world Parliaments, particularly in the Commonwealth. Country summaries are given in Chapter 3. Chapter 4 details the Indian scenario based on the cases decided in the

Lok Sabha, Rajya Sabha and the State Legislatures. Some of the cases decided by the Presiding Officers were challenged in the courts of law and the courts pronounced their judgements thereon. Of these, six important judgements have been suitably reproduced in this Chapter. Chapter 5 gives an account of some of the lacunae noticed in the law and the recommendations to tackle such deficiencies, made by the Election Commission of India, the Law Commission of India, the National Commission to Review the Constitution, etc. The endeavours of the Conferences of Presiding Officers of Legislative Bodies in India to make the law more effective, are also stated in this Chapter.

Apart from this, the Study carries several Annexures containing useful information including the decisions given by the Speakers of Lok Sabha and Chairmen of Rajya Sabha and opinions of the Attorney - General for India on some issues pertaining to the law. Besides, a catalogue of the existing literature on the subject in the form of a 'Bibliography' has been added to facilitate further reference. A Case Index and a Subject Index have also been included in the book to facilitate quick reference and consultation.

I am deeply beholden to the Hon'ble Speaker of Lok Sabha, Shri Somnath Chatterjee, himself a legal luminary, for his constant encouragement inspiring us to finalise the work expeditiously. I profoundly thank him for contributing an illuminating Foreword to the book which has indeed enhanced the worth of this publication.

I also place on record my heartfelt gratitude for the unflinching support received from the former Speakers of Lok Sabha, late Shri G.M.C. Balayogi and Shri Manohar Joshi during whose tenures this project was initiated and carried through.

I would like to sincerely thank my distinguished colleagues in foreign Parliaments who responded to our Questionnaires and queries and made available valuable information about their Parliaments for this study.

I am grateful to Dr. Yogendra Narain, my distinguished colleague and Secretary-General, Rajya Sabha, for providing information pertaining to the Rajya Sabha. I also express my great appreciation and thanks for the dedicated endeavours made by the Secretaries of all the State and Union Territory Legislatures in India in providing information relating to their Legislatures and for their unstinted support and cooperation in bringing out this publication.

It would not be out of place to mention that such a major project could not have been completed without the support of a dedicated team of officers and staff. I would like to particularly acknowledge the hard work put in by Shri R.C. Ahuja and Shri V.K. Sharma, Joint Secretaries; Dr. Rupa Narayan Das, Deputy Director, Shri Ravindra Garimella, Under Secretary; Km. Samita Bhowmick, Dr. Jayadev

Sahu and Shri B. Phani Kumar, Assistant Directors; and Shri M.K. Sharma, Research Officer.

Thanks are also due to Shri B.V. Gupta and Shri Vivek Gupta of the Metropolitan Book Co. Pvt. Ltd., Delhi, for their cooperation in publishing the book.

We hope that the study will be a valuable reference manual and a helpful guide to Presiding Officers, parliamentarians, jurists, academics and others interested in the subject.

New Delhi,
May, 2005

(G.C. MALHOTRA)

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ABBREVIATIONS

ACDP	African Christian Democratic Party
ADMK	Anna Dravida Munnetra Kazhagam
AGP	Asom Gana Parishad
AIADMK	All India Anna Dravida Munnetra Kazhagam
AICP(Dange)	All India Communist Party (Dange)
AIFB	All India Forward Bloc
AIML	All India Muslim League
AIR	All India Reporter
AIRJP	All India Rashtriya Janata Party
APHLC	All Party Hill Leaders' Conference
ANC	African National Congress
APLA	Andhra Pradesh Legislative Assembly
BAC	Business Advisory Committee
BBM	Bharipa Bahujan Mahasangha
BJD	Biju Janata Dal
BJP	Bharatiya Janata Party
BJS	Bharatiya Jan Sangh
BKD	Bharatiya Kranti Dal
BKKP	Bharatiya Kisan Kamgar Party
BLA	Bihar Legislative Assembly
BPST	Bureau of Parliamentary Studies and Training
BSP	Bahujan Samaj Party
BSP(R)	Bahujan Samaj Party (Raj Bahadur)
CFD	Congress for Democracy
Cong.(I)	Congress (Indira)
Cong.(O)	Congress Party (Organisation)
Cong.(T)	Congress (Tiwari)
Cong.(U)	Congress (Urs)
CPI	Communist Party of India
CPI(M)	Communist Party of India (Marxist)
CPI(ML)	Communist Party of India (Marxist-Leninist)

DMK	Dravida Munnetra Kazhagam
FIR	First Information Report
GPCP	Goan People's Congress Party
GPP	Goan People's Party
GRC	Goa Rajiv Congress
HKMP	Hind Kisan Mazdoor Party
HLD	Haryana Lok Dal
HLD(R)	Haryana Lok Dal (Rashtriya)
HPLA	Himachal Pradesh Legislative Assembly
HPU	Hill People's Union
HSPDP	Hill State People's Democratic Party
HVC	Haryana Vikas Party
HVP	Himachal Vikas Party
IFP	Inkatha Freedom Party
INC	Indian National Congress
INLD	Indian National Lok Dal
IPC	Indian Penal Code
IPF	Indian People's Front
ISP	Indian Socialist Party
IUML	Indian Union Muslim League
JD	Janata Dal
JD(S)	Janata Dal (Samajwadi)
	Janata Dal (Secular)
	Janata Dal (Socialist)
JD(U)	Janata Dal (United)
JMM	Jharkhand Mukti Morcha
JMM(M)	Jharkhand Mukti Morcha (Mardi)
JP	Janata Party
JPC	Joint Parliamentary Committee
KANU	Kenyan African National Union
KLP	Krishikar Lok Party
KMLP	Kisan Mazdoor Lok Paksha
KMPP	Kisan Mazdoor Praja Party
KNA	Kuki National Assembly
KPU	Kenya People's Union
KSP	Kerala Socialist Party
LDF	Left Democratic Front

LJSP	Lok Jan Shakti Party
LS	Lok Sabha
MDA	Meghalaya Democratic Alliance
MDF	Meghalaya Democratic Front
MDMK	Marumalarchi Dravida Munnetra Kazhagam
MDP	Meghalaya Democratic Party
MES	Maharashtra Ekikarana Samiti
MGJP	Maha Gujarat Janata Party
MGP	Maharashtrawadi Gomantak Party
MGR-ADMK	MGR-Anna Dravida Munnetra Kazhagam
MHU	Manipur Hills Union
MJD	Mizo Janata Dal
MNC	Manipur National Conference
MNF	Mizo National Front
MPF	Meghalaya Parliamentary Forum
MPLA	Madhya Pradesh Legislative Assembly
MPLADS	Members of Parliament Local Area Development Scheme
MPP	Manipur People's Party
MSCP	Manipur State Congress Party
MUPP	Meghalaya United Parliamentary Party
NAGP	Natun Asom Gana Parishad
NCCR	National Convention for Construction and Reforms
NCP	Nationalist Congress Party
NDA	National Democratic Alliance
NDP	National Democratic Party
NNP	New National Party
NIFM	National Institute of Financial Management
NNP	Nagaland People's Party
NNDP	Nagaland Nationalist Democratic Party
NNO	Nagaland People's Organisation
NNC	Nagaland People's Council
NSCN	National Socialist Council of Nagaland
PAC	Public Accounts Committee/ Pan Africanist Congress
PAP	People's Action Party
PDF	Progressive Democratic Front
PDM	People's Democratic Movement

PFM	People's Forum of Meghalaya
PMK	Pattali Makkal Katchi
PPA	People's Party of Arunachal
PSP	Praja Socialist Party
PVD	Progressive Vidhayak Dal
PWP	Peasants and Workers Party
RCPI	Revolutionary Communist Party of India
RJD	Rashtriya Janata Dal
RJP	Rashtriya Janata Party
RPI	Republican Party of India
RS	Rajya Sabha
RSP	Revolutionary Socialist Party
RSS	Rashtriya Swayamsevak Sangh
SAD	Shiromani Akali Dal
SAD(M)	Shiromani Akali Dal (Simranjit Singh Mann)
SC	Supreme Court
SDP	Social Democratic Party
SJP	Sikkim Janata Parishad
SJP(R)	Samajwadi Janata Party (Rashtriya)
SMS	Samyukta Maharashtra Samiti
SLP	Special Leave Petition
SP	Samajwadi Party
SSP	Samyukta Socialist Party/ Sikkim Sangram Parishad
SUCI	Socialist Unity Centre of India
SVD	Samyukta Vidhayak Dal
TDP	Telugu Desam Party
TMC	Tamil Manila Congress
TNLA	Tamil Nadu Legislative Assembly
TNV	Tripura National Volunteers
TRC	Tamizhaga Rajiv Congress
TUJS	Tripura Upajati Juba Samiti
UCDP	United Christian Democratic Party
UDF	United Democratic Front
UDM	United Democratic Movement
UDP	United Democratic Party
UFN	United Front of Nagaland

UGP	United Goans Party
UKD	Uttaranchal Kranti Dal/ Uttarakhand Kranti Dal
ULF	United Legislature Front
ULFA	United Liberation Front of Assam
UMF	United Minorities Front
UMPDF	United Meghalaya Parliamentary Democratic Forum
UPLA	Uttar Pradesh Legislative Assembly
UPCC	Uttar Pradesh Congress Committee
UPLC	Uttar Pradesh Legislative Council
UPF	United Parliamentary Forum
ZANUPF	Zimbabwe African National Union Patriotic Front
ZAPU	Zimbabwe African People's Union

CHAPTER ONE
GENESIS OF THE LAW

1

Genesis of the Law

Democracy, as aptly defined by Abraham Lincoln, "is the Government of the people, by the people and for the people." The will of the people is expressed through the ballot box. The ballot determines the party which would run the Government. Election is thus a vital component in a democratic system of governance. In a democracy, emergence of political parties with different and diverse ideologies is but natural. Free and fair competition amongst political parties at the hustings for wresting power to govern the country is indicative of a vibrant democracy. Political parties give concrete shape to divergent ideologies and are essential for success of any democracy. However, defections are a matter of concern for the party system.

To be in power, a party or a combination of parties must have the support of majority of the members of the House. When no party commands majority, some parties agree to form a coalition Government on the basis of a broad common programme. Sometimes, political parties even form a pre-poll alliance, particularly in the era of coalition governments. It is in such a situation that defection by a few members reduces the coalition Government into a minority. Defection may take place on grounds of ideology and principle or otherwise. Be that as it may, defection or changing of affiliation is a political reality in a democratic polity and more so in a parliamentary polity.

Etymology of the term 'defection'

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 will fully attached himself. It, similarly, indicates revolt, dissent, and rebellion by a person or a party. Defection thus connotes the process of abandoning a cause or withdrawing from it or from a party or programme. It has thus an element, on the one hand, of giving up one and, on the other, an element of

joining another. When the process is complete by reason of a person defecting from a cause or a party or a programme, he is termed as a defector. Defection thus is a process by which a person abandons or withdraws his allegiance or duty. 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.*

Defections in the United Kingdom

It may be mentioned in this connection that in the early stages of their parliamentary struggles for 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. 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.

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. The Home Rule Bill was defeated at the second reading stage and the Gladstone ministry had to resign.

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. From 1904 to 1922, Churchill remained a Liberal. In 1922, he contested the election as a "Lloyd George Liberal". *

Defections in India

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

* Sudarshan Agarwal, *The Anti-defection Law in India*, Parliamentarian, January 1986, LXVII No. 1, P.22

Legislative Assembly on the Muslim League ticket defected to join the Congress.

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

Rationale Behind the Law

There have been cases of political defection both within and outside the Commonwealth. Therefore, efforts 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. 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

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* For details, *see* Chapter 2.

** See G.C. Malhotra *Cabinet Responsibility to Legislature* : Motions of Confidence and No-Confidence in Lok Sabha and State Legislatures (Delhi: Metropolitan, 2004) pp 187 to 206 and 775 to 790.

manifestos. Constituents cast their votes in favour of contesting candidates not only keeping in mind their personal qualities but also the policies and programmes of their parties. It is, therefore, argued that a successful candidate is bound by the pledges made by his party during the electioneering. He is expected to remain loyal to his party and abide by the party discipline. If he chooses to leave the party, he must lose his membership too.

This logic could be put forward 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 an 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.

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.

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 is its accountability to the House which consists of members who in turn are accountable not only to their political parties but also to the electorate.

Evolution of Anti-defection Law in India

The genesis of the endeavours towards bringing forward a legislation in India for curbing the malaise of defections can be traced to a private member's resolution moved in the Fourth Lok Sabha on 11 August 1967 by Shri P. Venkatasubbaiah, When Shri P. Venkatasubbaiah's resolution in Lok Sabha was under discussion, the propriety of legislators changing their allegiance from one party to another and their frequent crossing of the floor and its effect on the growth of Parliamentary democracy was actively deliberated upon in the Presiding Officers' Conference held in New Delhi on 14 and 15 October 1967. After due deliberations, the Presiding Officers' Conference left the task of taking steps towards curbing defections to the political parties and the Government.

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

> This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up

immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard.

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

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

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

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

The Constitution (Thirty-second Amendment) Bill, 1973

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

The Bill provided for disqualification of a member from continuing as a member of either House of Parliament, if he voluntarily gave up membership of his political party which sponsored him as a candidate at elections or if he without

prior permission voted or abstained from voting in the House contrary to any direction issued by the political party to which he belonged. The Bill further provided that such person shall not be disqualified if he voluntarily gave up his membership of such a political party by reason of a split therein. Numerical strength for a split was however not specified. The Bill did not apply to members of unrecognized political parties, independents and nominated members.

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

On 13 December 1973, a motion for reference of the Constitution (Thirty-second Amendment) Bill, 1973 to a Joint Committee of the Houses of Parliament was adopted in the Lok Sabha. On 17 December 1973, the concurrence motion in this respect was adopted in the Rajya Sabha. The Joint Committee of the Houses of Parliament became defunct upon dissolution of Fifth Lok Sabha on 18 January 1977.

The Constitution (Forty-eighth Amendment) Bill, 1978

On 28 August 1978, another attempt was made in this direction by bringing forward the Constitution (Forty-eighth Amendment) Bill, 1978 in Lok Sabha. Several members belonging to both ruling party and opposition parties opposed the Bill at the introduction stage itself. The members took serious objections to the alleged misrepresentation of facts in the Statement of Objects and Reasons inasmuch as the members were not consulted over the provisions of the Bill, whereas the Statement of Objects and Reasons of the Bill said "the problem cuts across all parties. It has been examined in consultation with the leaders of political parties". Some salient features of the Bill were the following:-

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

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

(iii) In case one-fourth of the members of legislature party or where the strength was less than 20, not less than five members formed a new political party and such party had been recognized by the Presiding

Officer or registered with the Election Com nission, the members of the new political party would not be disqualified.

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

In view of stiff opposition, the Minister withdrew the motion for leave to introduce the Bill by the leave of the House.

Introduction of Anti-defection Law

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

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

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

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

The Constitution (Ninety-first Amendment) Act, 2003

In response to the demands made from time to time from various quarters for strengthening the Anti-defection Law on the ground that the provisions of the Tenth Schedule to the Constitution have not been able to achieve the desired goal of checking defections, the Government introduced in the Lok Sabha on 5 May 2003, the Constitution (Ninety-seventh) Amendment Bill, 2003. The Standing Committee on 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 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 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 the term of his office as such member would 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 is declared elected, whichever is earlier. The Act also lays down that the total number 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.

Anti-defection Law in Jammu and Kashmir

It is significant to mention that 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 became 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 abstains 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 has since been added to the Constitution of Jammu and Kashmir in the year 1987 which is popularly known as Anti-defection Law. It is also pertinent to mention that even after deletion of the split provision from the Tenth Schedule after enactment of the Constitution (Ninety-first Amendment) Act, the provision relating to split continues to exist in the Anti-defection law of Jammu and Kashmir.

It is noteworthy to mention that in case of Jammu and Kashmir if any question arises as to whether a member of the House has become subject to disqualification under the provisions 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. In case, however, where the question which has arisen relates to a member belonging to a political party which has not elected any Leader of its Legislature 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.

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. No case under Anti-defection Law has been reported so far in Jammu and Kashmir.

Anti-defection law is thus dynamic. The law has been amended in response to changing needs of the time. The efficacy of the law comes to the fore only if it is tested and tried. Therefore, scope for improvement is always there.

CHAPTER TWO
WORLD PARLIAMENTS
AN OVERVIEW

2

World Parliaments: An Overview

In order to study the position relating to defections and anti-defection laws in various Parliaments, 52 Parliaments of the Commonwealth were requested to provide information. Out of these, 35 Parliaments responded. Information about 4 more Commonwealth Parliaments was culled out from other sources. Thus, information relating to political defections and Anti-defection Laws with regard to 40 Commonwealth Parliaments (including India) has been analysed in this chapter.

Attempts were made to collect and collate information about other Parliaments as well to make the study more broad-based. Information with regard to 25 Parliaments outside the Commonwealth contained in this chapter is primarily based on the responses to a questionnaire circulated by the author to the Clerks/Secretaries-General at the Inter-Parliamentary Conference held in Mexico in April 2004. In respect of some countries information so gathered has been supplemented from other sources also*.

Political Defections: Commonwealth Experience

The phenomenon of defection or shifting party allegiance by legislators is known by different nomenclatures- such as 'floor-crossing', 'carpet-crossing', 'party-hopping', `dispute' and `waka-jumping'- in different parts of the Commonwealth. In some countries defections are a non-issue and not perceived as a problem, whereas in some other countries, they have at times threatened the very stability of the government. Naturally, therefore, while some countries deal with defections with the help of well-established customs, conventions and parliamentary practices and procedures, others have framed laws and rules to tackle the problem.

This study, encompassing 40 Parliaments of the Commonwealth, is an exercise to bring their established laws, rules, practices and procedures and conventions all together at one place. The information gathered reveals that out of the 40

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* Information about defections and anti-defection laws in World Parliaments can also be seen at the Statement, Chart, and Graphs in Chapter 3.

Parliaments, 23 have framed anti-defection laws and 17 do not have such laws.

Handling Defections without Legislation

Foremost among the 17 Parliaments having no law to deal with defections is the Mother of Parliaments itself. In the United Kingdom there is no bar on members changing their party affiliations. A member who defects is not required to resign. Seating in the House of Commons is governed by conventions and not rules, but a member who has defected would normally sit separately from party members. In the Australian Parliament as well, there are no laws or rules governing defections, other than internal party arrangements. Similar is the case of the Parliament of Canada, where there is no prohibition - legal or constitutional - against the practice of crossing the floor. The member's entitlement to sit as a member in the House is not contingent upon his political affiliation. The Whip makes changes in the seating of a member or members within a party and notifies the Speaker. Where a member decides to cross the floor and sits with another party, his new Party Whip determines the seating arrangement for him.

In Barbados, there is no anti-defection law though there are cases of defection. However, there is a consensus that if a member defects, his seat should be declared vacant thereby paving the way for a by-election.

In Malaysia also, there is no law regulating defections, though there have been cases of defection and there has been a demand to enact legislation in this regard. In fact, there was a Private Member's Bill in 1978 to check defection of elected representatives by requiring a member of Parliament to vacate his seat within 30 days on his resignation or expulsion from the party on whose ticket he was originally elected.

The peculiarity of the Parliament of Nauru is that it has no cohesive force in the form of political parties. The members are elected on the basis of adult suffrage and are free to act according to their conscience. Once elected they become members either of the ruling group called 'caucus' or the opposition called 'backbenchers'. This being so, the Parliament of Nauru has not faced the problem of defection in the true sense of the term. Here the problem is such that members of the 'caucus' often shift their allegiance to backbenchers to form coalitions and bring down the government of the day by moving No-confidence Motion as provided in article 24(1) of the Constitution of Nauru.

Apart from these, there are Parliaments like Anguilla, Bermuda, Botswana, Cameroon, Cyprus, Dominica, Grenada, Jamaica, Namibia, Seychelles and Tuvalu where there are no laws or Rules to deal with the cases of defection.

Anti-defection Legislation

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. The position in India is taken as the reference point to facilitate a comparison. However, it may not be taken as a benchmark. Detailed notes on the laws and rules existing in individual countries have been given in Chapter 3.

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, article 97(1) of 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.

In Guyana, which has a system of proportional representation, a constitution amendment Act was brought about in 2000 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. 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, an amendment to the Electoral Act provides for disqualification of a proportional representation member if he crosses the floor or resigns from the party, which had supported his candidature. However, the law is not applicable to the members having constituency seats. In Malawi, the 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 organisation

whose activities are political in nature. The Parliament of Mozambique has a law, i.e. Law 2/95 of 8 May 1995, 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 'Waka-jumping*, 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, defection is known as 'carpet crossing'. 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. 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. Article 46(2)(b) of the 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.

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' (the Ombudsman Commission), 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 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 *vide* article 63A lays down the grounds of defection on which a member of a parliamentary party in

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* The term 'Waka Jumping' is used in case of New Zealand, 'Waka' is the Maori word for 'Conoe'. The origin of the term relates to the racial identity of the defectors, almost all the party jumpers were Maori.

a House is disqualified. These, *inter alia*, are if he resigns from membership of his political party or joins another parliamentary party.

In Samoa, the Electoral Amendment Act 2005 which came into force on 1 April 2005 amended Part IIA 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, Section 47 of the Constitution, as amended by Act No.2 of 2003 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. 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.

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, under article 99(13) of 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.

Article 71(1)(e) of the 1977 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, as per section 49A(1) of 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 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, 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. 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, article 83(1,g) of the Constitution 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.

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 within 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.

The defection law as contained in article 63A of the Constitution of Pakistan *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, Section 65(2) of the Constitution 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.

Split/Merger

In India, the anti-defection law as contained in the Constitution (Fifty-second Amendment) Act, 1985 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.

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 by the Constitution (Ninety-first Amendment) Act 2003.

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 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. However, there is no prescribed number as to what constitutes a split or a merger. 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. In Belize, Guyana, New Zealand, Sri Lanka, Trinidad and Tobago, 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. In Zimbabwe, no exemption is given in cases of splits and mergers.

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 parliamentary bench and he remains not affiliated to another party, he becomes an independent.

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 Kenya, a member of the National Assembly having accepted appointment as a nominated member of a political party shall vacate his seat. In Samao, 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 member's 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.

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 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. 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.

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. 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. 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 and he does not attract the provision relating to the law in this regard. 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 article 63A of the Constitution 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. Article 69(1) of the Constitution of Zimbabwe 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.

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,

members on many occasions have moved the concerned courts challenging the orders of the Speaker. The court's judgments have been implemented also.

In Bangladesh, all the decisions given by the Election Commission are final and no provision for appeal lies against such decisions. Whereas in India only a member of the House can file a petition for disqualification of another member, in Bangladesh any person or a member can bring the dispute to the notice of the Speaker. The Speaker then prepares a statement containing all details and sends it to the Election Commission. In Belize, the Speaker is competent to take decision in cases relating to floor crossing. However, the decision of the Speaker is appealable in the Supreme Court. In Lesotho, the question regarding disqualification of a member is taken up by the Presiding Officer *suo moto*. In Malawi, the Speaker's decision is preceded by a motion from another member. The Presiding Officer cannot act unless there is a motion for the removal of a member. In Mozambique, the loss of the mandate of a Deputy is declared by the Standing Committee, a body chaired by the Speaker, which should be announced in the plenary and published in the Government Gazette. It is upon the Standing Committee to discuss the sanctions in consultation with the Chief Whip of the bench the deputy belongs to. Further, there is the choice to appeal against the sanctions to the plenary within eight days after notification.

In New Zealand, the Speaker acts only upon a written notice received either from the member himself in case of his resignation from the parliamentary membership of a party or from the parliamentary leader of a party in case of member's expulsion from that party. The Speaker cannot raise the issue on his own initiative. In both the eventualities, the Speaker is concerned only with whether a notice in the correct form has been given. As advice in the case of resignation can only come from the member himself, there is unlikely to be any conflict. In the case of expulsion, the Speaker has no power to review a parliamentary party's decision to expel a member. However, a member can only be expelled if at least two-thirds of the parliamentary members of the party support the member's expulsion.

In Pakistan, if a member comes under the rigour of disqualification on the grounds laid down in article 63A of the Constitution, he may be declared in writing by the Head of the Parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer and the member concerned. However, before making such declaration, the Head of the Parliamentary party shall provide the member with an opportunity to show cause as to why such declaration may not be made against him.

The Presiding Officer shall, within two days, refer the declaration to the Chief Election Commissioner. Where the Election Commission confirms the declaration, the member shall cease to be a member of the House and his seat shall become vacant.

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 from the date of the filing of the appeal.

In Papua New Guinea, if a member chooses to change the party then he is required to face the 'leadership tribunal' (the Ombudsman Commission), which shall decide whether the grounds for resignation are valid. Under the legislation, valid resignations are possible only when the party has breached its own constitution or when the party has been declared insolvent. If the tribunal rules against the member, a by-election must be held.

In Singapore, the Constitution gives Parliament the power to decide any question relating to the disqualification of a member. The decision of the Parliament in such cases is final.

In South Africa, a member could resign from a party, during the window period, to form another party by written notification to the Speaker of the Legislature. A new party within the Legislature which had not been registered in terms of applicable law needed to formally apply for registration within the window period. Registration of the new party needed to be confirmed by the appropriate authority (i.e. the Independent Electoral Commission) within four months after the expiry of the window period. Within seven days after expiry of the window period, the Speaker would publish in the Gazette details of the altered composition of the Legislature. Where applicable, a party is required within seven days after the window period to submit to the Secretary of the Legislature a new list of candidates.

In Sri Lanka, there is no provision to enable a member to file a petition for disqualification against another member. Similarly the Presiding Officer has no authority to take up a matter relating to defection. However, in case of the expulsion of a member, his seat shall not become vacant if prior to the expiration of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. If the Court determines that the expulsion was valid, the vacancy shall occur from the date of such determination.

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 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. 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. 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 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. 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 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, 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 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.

The Experience of Non-Commonwealth Countries

While some of the countries outside the Commonwealth have framed laws to deal with defections, some have not framed laws in this regard. The countries outside the Commonwealth which have experience of defections but have not framed laws include the *Czech Republic, Chile, Finland, France, Germany, Italy, Mali, Norway, Poland, Rwanda, Sudan, Sweden, Switzerland and USA,* etc. In the erstwhile *West Germany,* Herr Helmut Schmidt's Social Democratic-led coalition government was brought down in October 1982 by the defection of three former Ministers from the Free Democratic Party, and some other members of their party in the Bundestag. *In Poland,* although there are no laws relating to defection, leaders of political parties have the right to issue whip to their members to vote in a particular way. However, when a member is expelled from the party for violating the whip, he does not lose his parliamentary seat. In Sweden where defections are very rare, the defecting MPs are called 'wilds'.

Similarly, there are countries, which have experience in this regard and have also framed laws. These include *Bulgaria, Gabon, Japan, Niger, Portugal, Romania* and *Thailand,* etc. In *Romania,* the law relating to changing party affiliation is mentioned in the standing orders of the two chambers and also in the law of the

political parties. In *Thailand* Section 118 of the Constitution *inter alia* provides that membership of a member of the House of Representative terminates upon resignation from membership of his political party or his political party passing a resolution, with the votes of not less than three-fourths of the joint meeting of the Executive Committee of that political party and members of the House of Representatives belonging to that political party, terminating his membership of the political party. In such cases, his membership shall be deemed to have terminated as from the date of the resignation or the passing of the resolution of the political party except where such member of the House of Representatives appeals to the Constitutional Court within 30 days as from the date of the passing of the resolution of the political party.

There are also countries, which have neither the law nor the experience in this regard. They include *Angola, Algeria, Israel* and *Croatia*, etc. The Constitution of *Angola* does not allow change of party during the term of the Legislature.

Conclusion

Anti-defection laws are evolving and dynamic. While many Parliaments have addressed the issue with the help of parliamentary rules, customs and conventions, some have passed laws and framed specific rules to cope with the issues relating to changing party affiliation by members.

Anti-defection laws should endeavour to harmonise the need of stability of the government, with the need to ensure executive accountability to Parliament and party discipline amongst members and protect their rights as well.

CHAPTER THREE
COMMONWEALTH PARLIAMENTS

3

Commonwealth Parliaments

A. Country Summaries

ANGUILLA

The Anguilla House of Assembly does not have any experience of political defections. Therefore, there is no anti-defection law in Anguilla.

AUSTRALIA

In Australia, for many years, there has been clear majority government by one or other of the two main parties, the Liberal Party or the National Party. At present in Australia, however, there is a coalition Government of the Liberal Party and the National Party.

Party control over their members has tended to be strong, and that is why the few political defections which have occurred have had little effect on the balance of the parties or the operation of the House.

It is also quite rare for members to vote against, or resign from the political party to which they belong. There are no laws or rules governing such occurrences, other than internal party arrangements, and a member changing party allegiance retains his or her seat in the Parliament regardless of such action.

The Constitution of Australia does not contain any reference to political parties except for a provision requiring casual Senate vacancies to be filled by a person of the same party as the Senator who vacated his or her place. The Standing Orders of the House of Representatives do not refer to political parties at all.

In the Australian system of government, members are elected as individuals to represent their constituencies and party membership is a matter for their personal choice. In practice, electors generally vote for candidates on the basis of their party membership and publicized party policies but there is no formal recognition of this in the Constitution or other Statutes.

During the tenure of the Thirty-ninth Parliament (1998-2001), two members of the House of Representatives resigned from the political party to which they belonged at the time of elections in 1998. Even after leaving their parties, they remained members of the House, sat in the House as independents and moved to a different seating location in the Chamber. Later at the General Elections held in November 2001, both the members stood for re-election as independents, one was successful and the other failed to retain his seat. In the Senate also there is nothing to prevent a member leaving his party in the course of the parliamentary term. There have been occasional cases of sitting Senators leaving their party and becoming independents or forming new parties. The most recent instance was that of a former Leader of a minor party, the Australian Democrats, Senator Meg Lees, who became an independent in mid-2002 and has recently formed a new party called the Australian Progressive Alliance.

BANGLADESH

Article 152 of the Constitution of Bangladesh defines 'political party'. 'Political Party' includes a group or combination of persons who operate within or outside Parliament under a name and who hold themselves out for the purpose of propagating a political opinion or engaging in any other political activity.

In Bangladesh, the constitutional provisions with regard to political defections are very strict and stringent. As a result, such problems occur rarely. Article 70 read with article 66(4) of the Constitution, the Members of Parliament (Determination of Dispute) Act, 1980 and Rule 178(1), (2) and (4) of the Rules of Procedure of Parliament check the menace of defection.

The term 'defection' has not been used in the Law. Such a problem is termed as 'dispute'. Article 66(4) of the Constitution *inter alia* lays down that if any dispute arises as to whether a member of Parliament has, after his election, become subject to any of the disqualifications mentioned in clause (2) or as to whether a member of Parliament should vacate his seat pursuant to article 70, the dispute shall be referred to the Election Commission to hear and determine it and the decision of the Commission on such reference shall be final. Article 70 deals with vacation of seat on resignation, etc. Clause (1) provides that a person elected as a member of Parliament at an election at which he was nominated as a candidate by a political party shall vacate his seat if he resigns from that party or votes in Parliament against that party. By way of an explanation to this clause it has been provided that if a member of Parliament: (a) being present in Parliament abstains from voting or (b) absents himself from any sitting of Parliament, ignoring the direction of the

party which nominated him at the election as a candidate not to do so, he shall be deemed to have voted against that party. Clause (2) provides that if, at any time, any question as to the leadership of the parliamentary party of a political party arises, the Speaker shall, within seven days of being informed of in writing by a person claiming the leadership of the majority of the members of that Party in Parliament, convene a meeting of all members of Parliament of that party in accordance with the rules of procedure of Parliament and determine its parliamentary leadership by the votes of the majority through division and if, in the matter of voting in Parliament, any member does not comply with the direction of the leadership so determined, he shall be deemed to have voted against that party under Clause (1) and shall vacate his seat in the Parliament.

Further, clause (3) lays down that if a person, after being elected a member of Parliament as an independent candidate, joins any political party, he shall, for the purpose of this article, be deemed to have been elected as a nominee of that party.

The Member of Parliament (Determination of Dispute) Act, 1980, enacted on 27 January 1981, empowers the Election Commission to give full effect to the provisions of clause (4) of article 66 of the Constitution. The procedure to deal with such disputes is mentioned in Rule 178 of the Rules of Procedure of Parliament. It provides that if any dispute arises as to whether a member has after his election become subject to any of the disqualifications mentioned in clause (2) of article 66 of the Constitution or as to whether a member should vacate his seat as per the terms of article 70 of the Constitution, the dispute shall be referred by the Speaker to the Election Commission. The dispute cannot be taken up by the Speaker or Deputy Speaker *suo-moto*. Any person or a member of the House can file a petition for disqualification against another member under the Members of Parliament (Determination of Dispute) Act, 1980 and under article 66(4) of the Constitution. As per Section 3 of the Act, the Speaker shall within thirty days after the dispute has arisen, prepare a statement containing the facts relating to the dispute, the name and address of the member of Parliament in respect of whose seat the dispute has arisen and the name and address of the person who raised the dispute and send the statement to the Election Commission to hear and determine the dispute.

The Election Commission, after hearing the case as per the procedure laid down communicates its decision on the dispute to the Speaker within one hundred and twenty days of the receipt of the statement. If the decision of the Election Commission is that the member has become disqualified or should vacate his seat, as the case may be, the member ceases to be a member of Parliament.

When a member is expelled from his party and this dispute is brought to the notice of the Speaker, he refers it to the Election Commission for decision about the vacation of seat in the Parliament. However, till the receipt of the decision of the Election Commission, the member continues to be a member of the Parliament. There is no provision for allowing separate seat to a member in the House even if he is expelled by his party. Once the decision is given by the Election Commission, it is final and no appeal lies thereafter.

While there is no provision of nominated members in Bangladesh Parliament, article 72(3) of the Constitution mentions about independent member of Parliament. If an independent member joins any political party after being elected, he shall for the purpose of the article be deemed to have been elected as a nominee of that party. No time limit has been fixed for such joining.

As regards splits in and mergers of parties, there is no specific provision/ exemption for the same in the law. Such circumstances are rare in Bangladesh. In case of splits and mergers, the members of Parliament continue to be the members of the party unless there is a dispute. In case of any dispute, the matter is referred to the Election Commission for determination of membership.

No exemption is available to the Speaker or the Deputy Speaker of the House from the rules in this regard. They continue to remain members of Parliament from the party they originally belonged to, unless dispute arises and the same is determined by the Election Commission otherwise.

As a result of the decisions of the Election Commission on the disputes referred to it, there have been a few instances of declaring members' seats vacant in the Parliament when they voted against or ignored the directions of the party.

BARBADOS

There is no anti-defection Law in Barbados. In fact political parties are not referred to or recognised in the Constitution. Also no reference is made to political parties in the Representation of the People Act, except in relation to the Rules made thereunder with respect of political broadcasts at election time. A Constitutional Review Commission had recommended that political parties should be defined and registered and laws enacted regarding the same including an anti-defection law. However, no law had been made in this regard till November 2002.

In Barbados, a person is nominated and elected as an individual to the House of Assembly even if he campaigns under the banner of a political party. Barbados has, however, had its experience with defections. In 1989, four members of the governing party including a Minister and the Chairman of Committees resigned

from the party and the Government to form a new party which became the Official Opposition. In 1994, another member of the Ruling Party ceased to give support to the Government and took a seat in the Opposition Benches although he did not become a member of the Official Opposition Party.

Since 1994, there have been only two cases: one member of the Ruling Party defected to the Opposition side; and one member from the Opposition crossed over to the Government side to take up a ministerial post.

Apart from this, there has been no case where an independent member has joined any party after being elected as an independent. Members are nominated to the Senate by the Government and Opposition and some are appointed by the Governor-General. Those appointed by the Governor-General are termed independent Senators. There has never been an occasion where the Governor-General has revoked any such appointment because of the nominee's support to a party.

In case of expulsion from the party, a member remains a member of the elected chamber and is seated separately from his former party. A party may, however, withdraw its appointee to the Senate for any reason including change of allegiance. In the 1970s, two Senators were removed from the Senate for voting contrary to the directions of their party.

The general feeling in Barbados about defections is that the seat of the member should be declared vacant thereby necessitating a by-election on the assumption that the member was elected on the basis of party affiliation. As regards a member abstaining on a vote of defiance of the party directive, it is felt that censorship and sanctions are options his party should take.

BELIZE

In Belize, there have been instances of defection after the general election in 1979 and in 1989. On both the occasions, a member of the Opposition party crossed over to the Government side of the House of Representatives.

Amendments to the Constitution to deal with 'crossing the floor' were enacted in 2000 and the same came into force in January 2001. Although the term 'defection' has not been formally defined under the law, the act of resigning from the political party under which a member was elected and crossing the floor amounts of defection where a member is subject to disqualification for crossing the floor, the leader of that political party in the House of Representatives notifies the Speaker in writing, within seven days of such happening. Upon receipt of the notice, the Speaker shall, if satisfied, make a declaration at the next sitting of

the House that the member has ceased to be a member by reason of crossing the floor. The member may, within twenty-one days of making the declaration, appeal against the declaration to the Supreme Court whose decision on the matter shall be final.

The Speaker is also subject to disqualification as a member of the House of Representatives by reason of crossing the floor *vide* Section 59A(4) of the Constitution. There is no provision in the Constitution in respect of independent and nominated members or splits or merger of parties. The Constitution also does not have any provisions dealing with members expelled from their parties.

BERMUDA

There is no provision in the laws or in the Rules of the House of Assembly of Bermuda concerning political defections or members crossing the floor of the House. Also there is no requirement of firm expectation that a sitting member of Parliament who switches political parties must resign from the Parliament when doing so. There have been a few instances of non-elected members of a political party switching their affiliations to another party, but the only case in recent memory of an elected and sitting member of the House of Assembly crossing the floor occurred in May 1998. Under Personal Explanations during the processing of the Order of Business at a regular meeting of the House, a member of the governing party rose to give a personal explanation of her decision to resign from her post as a Parliamentary Secretary in the Government and from her membership in the governing party with immediate effect. She then crossed the floor and took a seat on the Opposition Benches. This action reduced the Government's ruling majority in the House to one and the situation continued until the Parliament was dissolved prior to a general election in November 1998.

BOTSWANA

Botswana Parliament has faced the problem of political defections but to a lesser degree. The noticeable defection took place in 1999 when eleven members of Parliament belonging to Opposition Party defected to form a new political party. On defection, they remained in the House because they had been elected by their constituents.

There has not been any formal measure taken to combat defection. However, a motion was passed in the House in 1998 calling for members of Parliament and Councilors who defect to other parties to vacate their seats leading to fresh elections. This has not been enacted into a law as yet. But at the time of the debate

on the motion, members supported the idea that the seat of the defector should be declared vacant.

CAMEROON

The Parliament of Cameroon though has experience of political defection, no law has been enacted in this regard so far.

CANADA

"Political Parties", are the fundamental part of Canadian electoral process and detailed requirements concerning their registration are set out on part 18 of the Canada Elections Act. However, the Act does not attempt to define or describe what constitutes a "political party" opting instead, for a procedural definition *i.e* an organization is a political party if it has been registered in compliance with the procedures set out in the relevant legislation.

In the Canadian Parliament, although most members are elected with a party affiliation, they are not obliged to retain that party label during the whole of their mandate. A member who changes party allegiance is under no obligation to resign his seat and stand for re-election. His entitlement to sit as a member in the House is not contingent upon political affiliation. There is no prohibition, legal or constitutional, against the practice of crossing the floor. There is no reference to the term 'defection' in the Constitution or in the Standing Orders of the House of Commons or the Rules of the Senate. Also, there is no provision for disqualifying a member on the ground of defection, who has voted against party lines or who has abstained from voting. However, in a responsible parliamentary Government, it is required that legislators, elected as party candidates, act in concert as united party caucuses during the term of the legislature and be held publicly accountable in the next election. The matter of discipline is particularly important for the Government party which must retain the support, or confidence, of the Legislature to remain in office, and more so if that Government party commands the support of only a minority of legislators.

Any changes in the seating of a member or members within a party are made by the Whip who then notifies the Speaker. Similarly, if a member is expelled from his party or chooses to leave to sit as an independent, then the Speaker reassigns a new seat to the member. Where a member decides to cross the floor and sit with another party, his new party whip determines the seating arrangement for him. In many cases, no record of the change in the party affiliation or status appears in the Debates or the Journals. The Speaker is advised of the change through

correspondence or by means of a press release issued by the member. There are instances when members have changed parties and seating arrangements have been arranged accordingly. One case that is noteworthy occurred on 20 April 1977, when an opposition member, Jack Horner (Crowfoot) crossed the floor to the governing party and was appointed Minister without portfolio the following day. During the Thirty-third Parliament (1984-88), one Government member (Robert Toupin) became an independent member and later became a member of the New Democratic Party before finally sitting again as an independent member. Every time the member announced his decision before the House and Speaker accordingly changed the seating arrangement in appropriate way as early as possible. Again during the Thirty-fourth Parliament (1988-93), a Government backbencher (Gilbert Chartrand) chose to sit as an independent with other members who had formed a new party, the Block Que'be'cois, a year later, the same member received permission to return to the Progressive Conservative Party Caucus and sit with its members.

The decision by a group of members to split from their original party has always been left entirely to the discretion of their members. The Speaker does not have any say in these matters. A split is deemed to have taken place when members request the Speaker to change the seating arrangements in the House so that they may sit opposite their former party or outside the bloc of seats reserved for it.

The decision of members to leave the party under which they were elected to form a new group has occurred on a number of occasions since Confederation. In February 1943, three members from Quebec left the Liberal Party to form the *Bloc Populaire Canadien* in response to the introduction of conscription. In 1963, members of the Quebec wing of the Social Credit Party broke away to form a new group called the *Ralliement des Cre'ditistes*. In 1990, in response to the failure of the Meech Lake Accord, eight members of different political affiliations formed a new party, the *Block Que'be'cois*. The most recent case of members splitting from a party to form another group occurred in September 2001 when eight members of the Canadian Alliance Party split off to form the Democratic Representative Caucus, while maintaining that they were still part of the Canadian Alliance Party. After being formally expelled from the Canadian Alliance Party Caucus, they decided to form a coalition with the twelve members of the Progressive Conservative Party, to be identified as the Progressive Conservative /Democratic Representative (PC/ DR Coalition). The group requested full party recognition, namely with respect to seating in the House, precedence and the allocation of time in all deliberations.

In the Senate of Canada, there have been several instances where members chose to leave their original political party and sit with another party or to sit as an independent. Noteworthy of these are those of Senator Garry St. Germain, who was a Progressive Conservative from August 1983 to June 2001, became an independent in June and later switched over to Canadian Alliance in October 2000; Senator Andrews Ernest Joseph Thompson, a member of the Liberal Party from 1967 to 1997, became an independent from 1997 to 1998; Senator Douglas Donald Everett, a member of the Liberal Party from 1966 to 1990, became an independent Liberal in 1990 and remained so till 1994; Senator Jena-Maurice Simard, Progressive Conservative from 1968 to March 1988, became an independent Progressive Conservative from March 1988 to June 1998, and thereafter, again became Progressive Conservative from June 1988 to 2001; Senator Ann Elizabeth Haddon Bell, a member of the Liberal Party from 1970 to 1986, became an independent from 1986 to 1994; Senior Daniel Aikenk Lang, a member of the Liberal Party from 1964 to 1986, became an independent from 1986 to 1994; and Senator Eric Cook, a member of the Liberal Party from 1964 to 1982, became an independent from 1982 to 1984. In addition, on 10 June 1981, thirteen Senators chose to sit together in the Senate.

In his announcement, Senator Jean-Paul Deschatelets stated that :–

> a number of Senators have reached the conclusion that to serve Canada in the fullest sense, and to maintain the balance between representation by population and representation by region, they must take part in any proceedings or votes in the Senate independently and free of partisan dictates.

These Senators, however, did not change their party affiliation nor they formed or joined a new party. But they desired that their role in the Senate "be in accord with the concept of the Fathers of Confederation". They desired to be associated only in their individual freedom and individual independence with respect to the discharge of their responsibilities as members of the Senate of Canada.

The Senate is not an elected chamber. Senators can belong to a political party or not. They can change their political affiliation after their appointment, and during their tenure in the Senate or remain independent. The Rules of the Senate traditionally have referred only to 'Government' and 'Opposition' and have not distinguished on the basis of political parties. On 5 February 2002, the Senate adopted a report to "accord official recognition to parties that are registered as parties under the *Canada Elections* Act at the time that recognition is sought in the Senate and have at least five members in the Senate. Recognition would be withdrawn only if the party's

membership in the Senate fell below five members". The Rules are in the process of being amended to reflect this decision.

CYPRUS

In Cyprus, there is no law or regulation covering the subject of political defection.

DOMINICA

In Dominica, political defections do occur in the Legislature from time to time. The latest case being that of July 2000 when a member of the House of Assembly who had contested and won on an Opposition ticket switched allegiance to the Government. However, there is no legislation relating to political defections. Section 32 of the Constitution of Dominica sets out generally the grounds on which Representatives or Senators are disqualified from being elected or appointed. Section 66(2) of the Constitution lays down the conditions for appointment of Leader of the Opposition also addressed the question of Political Party allegiance in that contest. It reads as follows:

> . . . (2) Whenever there is occasion for the appointment of Leader of the Opposition, the President shall appoint the elected member of the House who appears to him most likely to command the support of a majority of the elected members of the House who do not support the Government: or, if no elected member of the House appears to him to command such support, the elected member of the House who appears to him to command the support of the largest single group of members of the House who do not support the Government.
>
> Provided that if a member of the House was elected at a general election in which he stood as a supporter of a political party and the majority of members of the House elected at that time (whether as Representatives or Senators) stood as supporters of that party, he shall so long as he remains a elected member of the House by virtue of that election, not be eligible for appointment as Leader of the Opposition.

GHANA

Article 97(1) of the Constitution of Ghana *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 and joins another party or remains in Parliament as an independent member. Similarly, he shall also vacate his

seat in Parliament if he being elected as an independent joins a political party.

However, a merger of parties at the national level sanctioned by the Constitutions or membership of a coalition government of which his original party forms part shall not affect the status of the member.

GRENADA

Grenada has a very small legislature and, therefore, the complexities of the larger Parliaments do not exist here. There are no laws or by-laws dealing with defections in Grenada. However, there has been a couple of instance when members after being elected have decided to change party affiliation. In the General elections held in 1995, the National Party (N.N.P.) won 8 of the 15 seats in the House. The Grenada United Labour Party (G.U.L.P.) won two seats and the National Democratic Party (N.D.C.) won 5 seats. The two G.U.L.P. members later formed an alliance with the N.N.P. The relationship did not last the term because the next General Elections were called 18 months before the scheduled time when one of the original National Party member decided to leave the party. The N.N.P. won all 15 seats in the next *i.e.* 1999 General Elections but a member (Hon. Michael Baptiste) left the party and became the Leader of the Opposition.

In Grenada, a member represents a constituency in the House. There are no legislated punitive measures that can be taken against defectors, if a member is expelled from his party, he continues to be a member of the House though there may be a change in the seating arrangement.

GUYANA

In the National Assembly of Guyana, "crossing the floor" or "defections" became alarming after the 1964 General Elections when for the first time, the system of proportional representation (List System) was used. In the elections, the Peoples National Congress and the United Force together won a majority of seats and a coalition Government was formed.

The People's Progressive Party initially refused to participate in the Assembly as the opposition. However, disaffection arose within the Party's rank before it entered the Assembly as Opposition in May 1965.

Three of its members defected and took their seats in the Assembly - one became a member of the coalition and a junior Minister while the other two remained 'independents'. Defections then was very easy as it was enough for those three members to appear at a sitting and be sworn-in, in order to participate in the Business of the Assembly and receive their emoluments. Moreover, since they were elected

through a list*, the party which put up them as its candidates did not have any power to extract their names from the list once they were elected. Under the system, the filling of a vacancy for any cause other than a dissolution of the Assembly was done by that person whose name was on the relevant lists of candidates and appeared next after the names of all persons who had become at the time of election or since had become members of the Assembly. Therefore, when one of the three defectors resigned, the person who filled his vacancy had already abandoned the People's Progressive Party, but that party was powerless to prevent him from being deemed elected as a member of the Assembly.

In November 1966, six months after Guyana became independent, an opposition member (Dr. Fenton W. Ramsahaye) moved a motion known as 'recall motion' in the Assembly, seeking amendment to the Constitution of Guyana to provide for declaring vacant the seats of members of the Assembly who cease to support the Party on whose list they were elected to the Assembly. The motion was, however, defeated by the Governments' majority. With the failure to have the motion passed, another step was taken to curb defections by the parties, that is, in order to be placed on a party's list at future elections, the candidates were made to sign an undated letter of resignation. Thus, when a critical problem arose between an elected member and his party, the member found himself out of the National Assembly. For some members these were embarrassing moments as they sat in their seats and listened to the Speaker announcing their resignation.

Attempts to curb defections were again made in 2000 when the work of revision of the Constitution was undertaken. Prior to that, Constitutional Review Commission was established in 1999 which made some recommendations relating to the problems of defections. Accordingly, a constitutional amendment was made and the paragraph (3) was inserted to article 156 of the Constitution. Paragraph (3) of article 156 reads as follows:–

> (3) a member of the National Assembly elected on a list shall be disqualified from being a member of the Assembly, if he or she, in the prescribed manner, declares that he or she will not support the list from which his or her name was extracted or, declares that he or she abstain from supporting that list or, declares his or her support for another list.

Since 2001 General Elections, only one incident of floor-crossing has taken

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* The manner in which the list of candidates was submitted to the electorate in accordance with the electoral regulations was the deciding factor of person to be declared member of the National Assembly. It was provided for a list of candidates to "set out the names, numbered serially and one below the other in order of priority for which their election is sought."

place. An opposition member, the only member of his party in the Assembly, joined the Government and became a Minister.

INDIA

The position with regard to India may be seen in Chapter on *Genesis of the Law*; Chapter Four on *Indian Scenario;* and *An Analytical Study* and Chapter Five on *Anti-defection Law in India: An Appraisal.*

JAMAICA

The Jamaican Parliament has experienced defections, but it has never been viewed as a serious problem. Though such acts have been ridiculed and taunted by other members as well as the public, nobody viewed it as a scourge to be eradicated. In the recent past, there have been less than ten defections. In the majority of the cases, the members crossing the floor retained their seats but as members of the other side. In one case, a new party was formed, of which the defecting member became a part. The member remained in the House as a member of Parliament, but operated as a spokesman for the new party. No by-election was held in any of the cases neither was there a public call for one.

There are no provisions, constitutional or otherwise, for dealing with defections, and nowhere has the term "defection" been formally defined.

KENYA

At Independence in 1963, the Republic of Kenya had a multi-party political system. On 12 December, 1964, the parties merged under the Ruling Party, Kenya African National Union (KANU) making the country a *de facto* single party State. This continued until 14 April 1966 when a new party called Kenya Peoples Union (KPU) was formed. Thereafter, many members changed their political affiliation and joined the KPU. The practice then was simple as all it required of members desiring to change parties was for them to change their sitting positions from either the Government to the Opposition Benches or *vice-versa.* KPU's membership rose to 28 in less than two weeks time (that is by 22 April 1966). This alarmed the Ruling Party KANU, which initiated legislation to curb defection.

The first law on defection was enacted on 28 April 1966 by an amendment to the Constitution. It provided that if a sitting member defected, he would be deemed to have relinquished his seat in Parliament; and in case, changed membership from one party to another he would be deemed to have relinquished a seat in Parliament; and in case the same member wishes to continue serving the same constituency in

the House, he would have to seek re-election on the sponsorship of the new party.

Following the enactment of 1966 Act, Kenya operated as a *de facto* single party State until it was changed into a *de jure* single party State on 9 June 1982. It was not until December 1991 that, *de jure* multi-partism issue was introduced through another constitutional amendment, which re-introduced the law to regulate defections. Section 40 of the present Constitution contains the provisions on political defections. Section 40 reads :

> A member of the National Assembly who, having stood at his election as an elected member with the support of or as a supporter of a political party, or having accepted appointment as a nominated member as a supporter of a political party, either -
>
> (a) resigns from that party at a time when that party is a parliamentary party; or (b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party.
>
> Shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat.
>
> Provided that this subsection shall not apply to any member who is elected as Speaker.

Since this law came into force and till April 2002, there were 16 cases of defections in the National Assembly – 15 in the Seventh Parliament and one in the Eighth Parliament. Each of these defections has resulted in loss of the parliamentary seat for the member so defecting and in each case, a by-election ensued.

LESOTHO

The Kingdom of Lesotho has had, so far, six Parliaments, *viz.*, 1965-69, 1973-84, 1985-86, 1993-98, 1998-2002 and May 2002 - till date. In between, the country was ruled by a Council of Ministers from 1970 to 1973 and by military from 1986 to 1993. Right from the beginning the Parliament had to face defections on several occasions. In the first Parliament, two members defected from the main opposition party and formed their own party. During the second Parliament, three opposition members joined the ruling party. In 1997, during the fourth Parliament, 40 out of 64 members of the ruling party split and formed their own party. Since they were in a majority in the National Assembly, the split away group remained the Government. In 2001, in the fifth Parliament, 28 out of 74 members of the ruling

party split and formed their own party. Prior to the sixth General Elections on 25 May 2002, a constitutional amendment was brought to provide for a Mixed Member Proportional Electoral System (80 constituency seats plus 40 proportional representative seats).

The only measure taken to combat defection was the passing of an amendment to the Electoral Act, 1968, in 1984 which was to the effect that a member who defected from the party which had supported his candidature would lose his seat in the National Assembly. After the Army take-over in 1986, this Act was repealed. The National Assembly Election Order Act 1992 which paved the way for return to Civil Rule in Lesotho, was originally silent about defections or splits.

The 1984 amendment to the Electoral Act, 1968 was revived in 2001 in respect to the National Assembly Election Act, 1992. The provisions of the Act, are applicable to the proportinal representation members only if they cross the floor or resign from their parties without crossing the floor or vote or abstain from voting in the House contrary to any directions of their parties; and not to the members having constituency seats.

In case a member is expelled from his 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.

An independent member would not be disqualified if he joins any political party after this election.

A question regarding disqualification of members under the law is taken up by the Presiding Officer *suo moto*. The Presiding officers of the respective Houses decides the question of disqualification of a member on ground of defection. Provision for appeal against the decision of the Presiding Officer is made by way of review by the House on a motion made after notice.

In case of split in a party, the Presiding officer is not required to ascertain or verify the *factum* of split on the ground that he is not concerned with the developments taking place outside the House. A split is considered to be a continuous process and deemed to have taken place from the time a claim is made by a member.

The terms defection has not been formally defined by the Constitution/Law/ Rules.

MALAWI

The Parliament of Malawi have faced the problems of political defections. In 1995, the Speaker declared vacant the seat of a ruling party member who had been seen holding campaign meetings with Opposition members. The Speaker's decision followed a Motion by a ruling party member to have the erring member's seat declared vacant for having crossed the floor. The member concerned and his accusers were both accorded an opportunity to be heard during the House debate in the matter. Subsequent to the Speaker's action, the member sought judicial intervention in the matter. The High Court, however, upheld the Speaker's decision. A by-election was held thereafter.

Again in another case, the Speaker declared the seats of two ruling party members vacant, pursuant to a Motion by one of the party's members. Having obtained a court injunction restraining the Speaker from implementing his decision, the members in question retained their seats while waiting for the court to finalise its judicial review on the issue.

The Constitution of Malawi lays down a provision whose principal object is to prevent parties from increasing their number in the House through the back door. The term used by the Constitution in respect of political defections is 'crossing the floor'. Section 65(1) of the Constitution as amended in 2001 provides that the Speaker shall declare vacant the seat of any member of the National Assembly who was, at the time of his election, a member of one political party represented in the National Assembly other than by that member alone but who has voluntarily ceased to be a member of that party or has joined another political party or has joined any other political party, or association or organization whose objectives or activities are political in nature. At the same time, members are fully protected against loss of seats for voting against party positions on various matters. Section 65(2) of the Constitution reads that "notwithstanding subsection (1), 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 a political party, represented in the National Assembly, of which he is a member.

The defection law applies only to members of Parliament who joined Parliament on the ticket of a political party. Members of Parliament who joined Parliament as independents may join political parties represented in the House without losing their seats. There are no nominated members in the National Assembly. All are elected directly in the first-past-the-post system. The seat of a member who defects is declared vacant by the Speaker and a by-election is held.

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.

Presiding officers in Malawi retain their party membership. However, Section 53(5) of the Constitution enjoins Presiding Officers to discharge their duties impartially. The Section reads that the Speaker, the Deputy Speaker or any other presiding member shall discharge his functions and duties and exercise such powers as he has by virtue of that office independent of the direction or interference of anybody or authority, save as accords with the express will and the Standing Orders of the National Assembly.

Malawi's anti-defection law is very brief and does not provide for procedure that the Speaker may follow prior to making his declaration nor do Standing Orders make such provisions. The practice that has developed over the years, however, is that the Speaker's decision is preceded by a Motion from another member. The Presiding Officer cannot act unless there is a motion for the removal of a member. Decisions made by the Speaker in matters of defections and any other matters are appelleable in a Court of Law. In this respect, Section 5 of Malawi's Constitution says, "Any act of Government or any law that is inconsistent with the provisions of this Constitution shall, to the extent of such inconsistency, be invalid".

As regards mergers and splits, the defection Law is uncertain about its application to mergers between two parties or splits in one party. Since there is no coalition government in the country and, therefore, the law has not yet been involved in this connection. Similarly, there are no intra-party splits that have culminated in one group registering their faction under a different political party. If such an eventuality occurred, members of such a splinter group would lose their seats.

Malawi's anti-defection law is still being tested. For instance, sometime back the Speaker decided not to declare vacant seats of some Opposition Members of Parliament who had, *en masse*, associated with the ruling party. One of the arguments employed by an Opposition Member in his defence was that in the case in question it was difficult to ascertain as to who was associating with whom; whether it was the ruling party members associating with the Opposition or *vice versa*.

MALAYSIA

The Parliament of Malaysia has faced the problem of political defections but no formal measures have been taken so far to combat it.

There was a Private Member's Bill in 1978 [The Members of Parliament

(Prevention of Defection) Bill, 1978], which sought to prohibit defection of elected representatives by requiring a member of Parliament to vacate his seat within 30 days of his resignation or expulsion from the party on whose ticket he was originally elected. The Bill could not be enacted.

MOZAMBIQUE

In Mozambique, the election of Deputies of the Assembly of the Republic is carried out through plurinominal lists of parties or coalition of parties, in each constituency, and every voter has the right to vote a single vote on each list. Hence there is no provision for independent candidates for Deputies of the Assembly of the Republic. The Deputy represents the whole country and not only the constituency through which he was elected and he defends the national interest according to the dictates of his conscience.

In Mozambique, the defection phenomenon is neither formally defined in the Constitution of the Republic nor in other existing laws. However, soon after the election of the first Multiparty Assembly in 1994, Law 2/95 was passed in May 1995, which outlines the conditions under which a Deputy loses his seat, is disqualified, or resigns from the Assembly of the Republic. This legislative measure, aimed at preventing defections, was brought into force with immediate effect.

The law *inter alia* stipulates that elected deputies from each party or coalition of parties may form a parliamentary bench, upon notifying the Speaker of the Assembly of the Republic of their registration for that effect. The Statute of the parliamentary bench is recognised as long as a party or coalition of parties has at least eleven elected Deputies. No Deputy may belong to more than one parliamentary bench.

The law provides that a Deputy loses his seat when he becomes a member or exercises duties in another party, other than the party through which he was elected. The definite loss of the mandate of Deputy is declared by the Standing Committee of the Assembly, a body chaired by the Speaker. It should be announced in the plenary and published in the Government Gazette.

The suspension of the mandate of the Deputy is declared by the Speaker of the Assembly of the Republic, upon verifying the fact or justification requested thereof in terms of the Statute of the Deputy. The Standing Committee of the Assembly of the Republic has enough powers to discuss the disqualification of a Deputy and the applicable sanction in case of his or her unbecoming conduct.

In Mozambique, the Law stipulates that it is upon the Standing Committee to discuss the sanctions in consultation with the Chief Whip of the bench the Deputy

belongs to. The same law ensures that the sanctions are preceded by a set of instructions and guarantying the right for the Deputy to protest his innocence. Further, it is provided for the choice to appeal against the sanctions for the plenary within eight days after notification.

There is no provision in terms of the law dealing with the procedures in case of splits in parliamentary coalitions. Coalitions constitute a single parliamentary bench and cease to be as such at the end of the tenure of that Legislature. This means that splits within parties or parliamentary coalitions are not formally recognized by law.

If a Deputy resigns or is expelled from his party or parliamentary bench and he remains not affiliated to another party, he becomes an independent. Under such situation, he does not lose his seat in the Assembly and remains the member for the full tenure of that Legislature as representative of his voters. His vote becomes independent of any party affiliation.

In Mozambique, the Speaker and the Deputy Speaker of the Assembly of the Republic 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.

NAMIBIA

In Namibia, there are no defection cases so far. If any member defects, he will lose his seat in the Parliament. If a member is expelled from his party, he automatically loses his seat in the Parliament. Any action relating to defection is taken within the party. The Leader of the Party only informs the Speaker about party decision of expelling the member and as a result that member loses his seat in Parliament.

The Presiding Officers are not concerned with the situations like splits and mergers and hence they do not deal with the development taking place within the parties.

NAURU

The unicameral Parliament of Nauru is an eighteen-member body, elected by the people on the basis of adult suffrage. Since there is no political party, the individual members are free to act on their conscience. Once elected the members either become Government front benchers or members of the ruling group known as 'caucus' or of the Opposition, known as "backbenchers". The general polity is run

on the issue to issue basis.

Parliament of Nauru has not faced the problem of 'defection' in true sense of the word because there are no recognised political parties and the mechanism of 'Whip' does not come into play. But in practice, when the members of the 'caucus' switch sides to align with the backbenchers to form coalitions, the governments are brought down by invoking article 24(1) of the Constitution of Nauru. Article 24(1) provides that where Parliament on a resolution approved by at least one-half of the total number of members of Parliament resolves that the President and Ministers be removed from office on the grounds that it has no confidence in the Cabinet, an election of a President shall be held. The censure or want of confidence motions have been moved as many as thirty five times during the last 27 years. The motions have been successfully carried in the Parliament on eighteen occasions resulting in the President and Cabinets either having been removed or having resigned from office on all these occasions.

No steps have, however, been taken in Nauru to combat this menace of frequent change of government in the above stated manner which impliedly means defection, though not defined. There is no constitutional provision, laws, Standing Orders to check the abuse of No-confidence Motion and use of invoking article 24(1) of the Constitution.

There is a general feeling of concern about this problem and it has been felt that ways and means should be found to check the abuse of No-confidence Motion *vis-a-vis* frequent change of governments. Some of the proposals which have come up are: direct election of the Executive President by the people instead of the present arrangement where the Parliament elects the Presidents; amending article 24(1) of the Constitution to define definite and justifiable grounds for taking recourse to vote of No-confidence Motion; removal of the President by way of impeachment voted by two-thirds of the members instead of the present arrangement where absolute majority of nine members can remove the President; and to provide a fixed minimum tenure to executive government with cautious optimism, etc.

Though concerns have been expressed by the legislators, pressure groups and the civil society, it may be a long way ahead when steps are taken in Nauru to tackle this typical problem of waka-jumpers or defections constitutionally by way of an enactment.

NEW ZEALAND

The electoral reforms made in 1996 introduced the German system of proportional representation in place of the 'first-past-the-post' system. This resulted

in a larger number of parties, seven, being represented in Parliament. Previously there had been a two-party system. These parties were not as cohesive as the established parties and in the first proportional representation Parliament, 11 out of 120 members defected from their parties. There was public outrage when 'List' members, once sworn in as members of Parliament, were able to defect to other parties, even to sustain those other parties in office.

To curb the problems of defections, the Electoral (Integrity) Amendment Act, 2001 was passed after the 1999 election and formation of a Coalition Government. This came into force on 22 December 2001.

The term 'defection' is not mentioned in the Act. The Act provides that the seat of a member becomes vacant if the member "ceases to be a parliamentary member of the political party for which the member of Parliament was elected". The member may cease to be a member of the parliamentary party by resignation or by expulsion from it. Accordingly, the seat of a member becomes vacant on two grounds. One is, if the member gives the Speaker a written notice that he has resigned from parliamentary membership of a party or wishes to be recognised as an independent member or as a member of another political party. The other ground for such eventuality is that if the parliamentary leader of a party gives the Speaker written notice that a member has been expelled from that parliamentary party.

An independent member is not affected by the anti-defection law. He can subsequently join a party and then leave it without the any legislative consequences. There are no nominated members in the House.

The Speaker cannot raise the issue related to defections. Only the member himself, in the case of resignation or the parliamentary party leader, in the case of expulsion, can raise the issue. On receipt of the written advice of a member's resignation or expulsion, the Speaker must decide if that advice complies with the form in which such advise must be communicated under the legislation. As the advice in the case of resignation can only come from the member himself there is unlikely to be any conflict. In the case of expulsion, the Speaker has no power to review a parliamentary party's decision to expel a member. The Speaker is concerned only with whether a notice in the correct form has been given. There is no appeal against decisions taken under the legislation. However, all statutory decisions are liable to be reviewed by the High Court on established public law grounds.

The present anti-defection law does not deal with splits. It applies to individual resignations and expulsions. A party could split without the anti-defection law being activated at all.

The existing anti-defection law is a temporary law. It will automatically expire at the time of the general elections due in 2005. At this point, it is only an experiment and not a permanent piece of New Zealand's electoral system. No cases have yet arisen under the existing anti-defection law.

NIGERIA

The political defections, popularly known as 'carpet crossing', were rampant during the first Parliament of Nigeria from 1960 to 1966. Thereafter, the period between 1966 and 1979 witnessed the military regime. When the second Republic Civilian Administration ushered in 1979, the Presidential Constitution of 1979 which ushered in the Second Republic Civilian Administration, made provisions to curb such excesses. The Third Republic which existed from 1990 to 1992 did not record any case of defections. The Fourth Republic which came into existence on 29 May 1999, under the 1999 Constitution, however, has been witnessing the incidents of carpet crossing.

Though the terms defection' has not been formally defined by the Constitution/ Laws/Standing Orders etc., Section 68 (1) (g) of the 1999 Constitution deals with the issue of defections. The section provides that a member of the Senate or the House of Representatives shall vacate his seat in the House of which he is a member if being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected; provided that his membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

As is evident from the proviso to section 68 (1) (g) of the Constitution of Nigeria, those members have been exempted who defect by way of splits or mergers. There is, however, no prescribed number as to what constitutes a split or a merger. It suffices when there is a merger of a faction of one political party with another or when there is a distinct split.

Nigeria being a young democracy is still in the early stages of development. In view of this, the various issues of political defection are yet to be fully addressed and politically and legally tested by the Legislature.

PAKISTAN

The Parliament of Pakistan has also faced the problem of defections or floor-crossing.

The Constitution of Pakistan vide article 63A lays down the grounds of defection on which a member of a Parliamentary Party in a House is disqualified. It provides that if a member of a parliamentary party composed of a single political party in a House:

(a) resigns from membership of his political party or joins another parliamentary party; or (b) votes or abstains from voting in the House contrary to any direction issued by the parliamentary party to which he belongs, in relation to- (i) election of the Prime Minister or the Chief Minister, (ii) a vote of Confidence or a vote of No-confidence, or (iii) a Money Bill.

He may be declared in writing by the Head of the Parliamentary Party to have defected from the political party, and the Head of the Parliamentary Party may forward a copy of the declaration to the Presiding Officer* and the member concerned. However, before making such declaration, the Head of the Parliamentary Party shall provide the member with an opportunity to show cause as to why such declaration may not be made against him.

A member of a House shall be deemed to be a member of a Parliamentary Party if he, having been elected as a candidate or nominee of a political party which constitutes the Parliamentary Party in the House* or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary Party after such election by means of a declaration in writing.

Upon receipt of the declaration, 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.

Where the Election Commission confirms the declaration, the member shall cease to be a member of the House and his seat shall become vacant.

Any party aggrieved by the decision of the Election Commission may, within thirty days, prefer an appeal to the Supreme Court, which shall decide the matter within three months from the date of the filing of the appeal.

Article 63A is not applicable to the Chairman or the Speaker of a House.

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* For the purpose of this Article "House" means the National Assembly or the Senate, in relation to the Federation; and a Provincial Assembly in relation to the Province, as the case may be; and "Presiding Officer" means the Speaker of the National Assembly, the Chairman of the Senate or the Speaker of the Provincial Assembly, as the case may be.

PAPUA NEW GUINEA

Since Independence in 1975, Papua New Guinea has experienced political defections.

In order to curb the problem, an anti-defection legislation was introduced in December 2000 as part of a package of reforms aimed at improving the country's electoral system, parliament and party system. The law, called the Integrity of Political Parties and Candidates Law, came into force for the 2002 elections. The purpose of the law is to prevent politicians from changing party affiliation. The law also envisages penalties if a member of the legislature leaves the party with which he was aligned when first elected and joins another party or becomes independent. If the member chooses to change the party then he is required to face the 'leadership tribunal' (the Ombudsman Commission), which shall decide whether the grounds for resignation are valid. Under the legislation, valid resignations are possible only when the party has breached its own constitution or when the party has been declared insolvent. If the tribunal rules against the member, a by-election must be held.

Members elected with party endorsement must vote in accordance with their party's position on key issues like the election of a Prime Minister, the Budget, votes of No-confidence and constitutional amendments. A member may abstain but if he votes against his party's position, he may face a range of possible penalties including loss of membership.

A member shall also vacate his seat in Parliament if having been elected as an independent candidate, he joins a political party.

SAMOA

Political parties have existed in Samoa outside Parliament since 1973 when such parties were registered under the Cooperative Societies Act. Political instability in Parliaments of the Pacific in 1996 and 1997 prompted the Parliament of Samoa to amend Standing Orders to provide for recognition of political parties in an attempt towards curbing floor crossing. Then there were two political parties represented in the Parliament - the Human Rights Protection Party (HRPP) with 37 members and the Samoa National Development Party (SNDP) with nine members - and three Independent members. Adoption of Standing Order 19 confirmed recognition of the two aforesaid parties and three Independent members.

On 26 June 1997, one of the members wrote to the Speaker informing him that he had moved out from the SNDP and had become an Independent member for the remainder of the Parliamentary term. The letter was read out by the Speaker

in the Parliament and no objection was raised. At that time there were no provisions regarding floor crossing either in the Standing Orders or in the Electoral Act.

The next day, the Speaker announced in the Parliament that since one of the SNDP members had become an Independent member, this had reduced the number of SNDP members to eight and the SNDP was, therefore, no longer recognized in the Parliament pursuant to the Standing Orders. This being the case, the eight members would all become Independent members for the remainder of the Parliamentary term. An attempt by the Independent members to form themselves into a coalition was rejected by the House because the Standing Order 19(3) is specific to "Coalitions between parties" and not Independent members.

Again in August 1997, two Independent members wrote to the Speaker quoting Standing Order 19(3) notifying their request to be recognized in the Parliament as members of the SNDP. The Speaker delivered his ruling on the matter on 20August 1997 and he rejected the request because it did not apply to the Standing Order 19(3) and as the main aim of the Standing Order 19 was to ensure stability of Parliament, and if the request of the two members was granted approval, this might very well encourage floor crossing and might very well be the catalyst for parliamentary instability. The Speaker was of the opinion that if he granted permission to the two Independent members to join a Party, then they should be required to resign from Parliament and go back to the constituencies for by-election. So the members remained as Independent members for the remainder of that Parliament. The Speaker's Ruling has never been questioned on a substantive motion.

Since the party strength of SNDP was reduced to eight, there was no longer a majority party in the Opposition and the position of the Leader of the Opposition no longer existed. For this reason the Prime Minister of the time moved an amendment to Standing Order to reduce the number of members to eight in order for a party to be recognized in the Parliament. The motion was approved and the SNDP was once again recognized as a party in Parliament.

Recently provisions were made in the Electoral Act to ensure control of floor crossing while retaining the rights of members to keep their seats in Parliament in view of the instability in the Parliament. The Electoral Amendment Act 2005 which came into force on 1 April 2005 amended Part IIA of the Principal Act by inserting Section 15F relating to election of candidates after section 15E. Section 15 F reads as under:

Notwithstanding any other law, including but not limited to Standing Orders:

(1) Subject to subsection (3), 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.

(2) Subject to subsection (4), 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.

(3) Subject to subsection (4), a candidate elected as a member, 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, 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.

(4) Where:

(a) a candidate elected as a member is or becomes, as the case may be, a member of a political party in accordance with subsection (1) or (2) or (3); and

(b) the 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."

Thus the Speaker's Ruling of 1997 kept the Parliament of Samoa stable for eight years and now the Electoral Act has taken over the same since 1 April 2005.

SEYCHELLES

The Parliament of Seychelles has not enacted any law on defections, thought, there had been a case of floor crossing in October 1997.

SIERRA LEONE

The Parliament of Sierra Leone has witnessed some cases of defections particularly prior to promulgation in 1978 of a One-Party Constitution which maintained a fusion of political parties. Such defections had adverse effect on the Opposition. Although defections were not particularly pervasive, the few incidents did have serious consequences. The Multi-Party Constitution of 1991, therefore, sought to curb such actions.

The Constitution of Sierra Leone which came into effect on 1 October 1991, in subsections (1) (K) (L) and (M) of Section 77, formulates the intention of prohibiting defections. It, however, does not lay down any formal definition of the term 'defection'. The section 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 and he so informs the Speaker or the Speaker is so informed by the Leader of that political party; or if, by his conduct in the Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that member's party that the member is no longer a member of the political party under whose symbol he was elected to Parliament; or if, being elected to Parliament as an independent candidate, he joins a political party in Parliament.

As is gathered from the above provisions, both collective as well as individual defections would be penalised. However, no case of defection has taken place after the promulgation of the 1991 Constitution and the given provisions are yet to be tested.

There are divergent schools of thought of the implementation of the anti-defection provisions in Sierra Leous. One view is that the Speaker has no discretion in the matter. When he is informed by the Leader of a political party that a sitting member is no longer a member of his party, the Speaker declare that member's seat vacant.

The other view is of the opinion that the Speaker has the right to verify the information given to him by the leader of a political party. In a case of party expulsion, the Speaker had set up a committee to investigate whether the seventeen members involved in the case had been duly expelled by their political party. The members had argued that they had not been that their said expulsion was undemocratic, fabricated and also outside the provisions of their party constitution. The findings of the Committee also endorsed the same view and concluded that the members were not expelled along the democratic lines of their party constitution. Aided by the report of the Committee, the Speaker arrived at the decision to reject the request of the party leader for expelling the members from the Parliament.

SINGAPORE

In the Singapore Legislature, the first incident of defection occurred after the 1959 general election when the Minister for National Development and his two supporters, both belonging to the ruling People's Action Party (PAP) were expelled from the Party for an alleged smearing campaign against the Government. All three proceeded to form an opposition party, the United People's Party.

Another incident took place in 1961. As a new government, the PAP was keen to seek a merger with the Federation of Malaye to ultimately secure its political independence from the British and to guarantee the country's economic survival. The merger was opposed by pro-communist elements in PAP. A Confidence Motion in the Government was brought before the Legislative Assembly. The Government won the motion and the 13 dissident members defected to form an Opposition Party, the *Barisan Sosialis*. In both these cases, the defectors continued to sit in the Legislative Assembly as representatives of their constituencies, due to absence of a law to oust them from their seats.

To curb such incidents, an amendment was made in 1963 to the then existing Singapore State Constitution under article 30(2)(b) of the Sabah, Sarawak and Singapore (State Constitutions) Order in Council. The amendment provided for the seat of a member of the Legislative Assembly to become vacant if he ceased to be a member of, or was expelled, or resigned from the political party for which he stood in the general election. The above mentioned article has since been carried over as article 46(2) (b) of the present Constitution of the Republic of Singapore. Under the article, a non-constituency member's seat falls vacant if he is subsequently elected as a member of Parliament for any constituency. Similarly, a nominated member's seat becomes vacant if he stands as a candidate for any political party in an election or if he is elected a member of Parliament for any constituency. Further, if a member resigns or is expelled from his party, he will lose his seat in Parliament.

Article 48 of the Constitution gives Parliament the power to decide on any question relating to the disqualification of a member. The decision of the Parliament in such cases is final.

SOUTH AFRICA

In the Parliament of South Africa, members represent not only the public but also specifically their parties in the Legislature. It is because of the system of proportional representation that they have, that voters first vote for the party of their choice; parties gain seats in the national and provincial Legislatures - strictly

according to the number of votes polled for the party; and after that parties nominate persons from the party lists to fill the seats in the Legislature. In these circumstances, political defection was prohibited in South Africa.

The Constitution has, however, been amended in 2003 to make provision for two 15-day window periods during the five-year life of a Parliament, during which Assembly members may change their party membership while retaining their seats in the Assembly. During this period, by giving written notification to the Speaker and complying with provisions laid down in this regard, a member may change party membership once, a party may merge, subdivide, or subdivide and merge once only; and a member may resign from a party to form another party.

Item 23A of Annexure A to Schedule 6, which was originally part of the (Interim) Constitution, 1993, and continued to apply as part of a Schedule to the Constitution, 1996, *inter alia* stipulated that a person would lose membership of a Legislature to which the Schedule applied if that person ceased to be a member of the party which had nominated that person as a member of the Legislature. It also provided that an Act of Parliament might, within a reasonable period after the new Constitution took effect, be passed in accordance with section 76(1) of the new Constitution to amend this item and item 23 to provide for the manner in which it would be possible for a member of a Legislature who ceased to be a member of the party which nominated that member, to retain membership of such Legislature. It further laid down that the Act might also provide for any existing party to merge with another party; or any party to subdivide into more than one party while allowing a member affected by such change, to retain membership of the Legislature.

It was against this backdrop that four government bills which *inter alia* sought to allow public representatives at national, provincial and local government levels to change party allegiance without losing their seats were passed by Parliament and assented to by the President on 19 June 2002. Immediately thereafter their constitutionality was challenged by several political parties with the result that the High Court suspended the operation of the four Acts pending a decision on the matter. On 4 October 2002, the Constitutional Court ruled only the Loss or Retention of Membership of National and Provincial Legislatures Act (No 22 of 2002) to be inconsistent with the Constitution and invalid. It did so essentially on technical grounds, namely, that it could not be said that the legislation had been introduced "within a reasonable period after the new Constitution took effect". The Court specifically refrained from expressing itself about the merits or demerits of a defection provision. The Court's findings did not affect the law pertaining to floor-crossing at local government level - and that therefore came into effect. The

Government then decided to proceed with providing for floor-crossing at national and provincial levels by way of introducing an amendment to the Constitution.

On 12 November 2002, the Minister for Justice and Constitutional Development tabled in Parliament the Constitution of the Republic of South Africa Fourth Amendment Bill. The bill was subsequently referred to the Portfolio Committee on Justice and Constitutional Development. On 25 February 2003, the bill was adopted by the Assembly after a division and by the National Council of Provinces on 18 March 2003. The President assented to the Constitution of the Republic of South Africa Amendment Act, 2003 (Act No 2 of 2003) which was published in the Government Gazette on 19 March 2003.

Section 47 of the Constitution, as amended by Act No.2 of 2003, provides *inter alia* that a person loses membership of the National Assembly if that person ceases to be a member of the party that nominated that person 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 a Provincial Legislature if that person ceases to be a member of the party that nominated that person as a member of the Legislature, unless that member has become a member of another party in accordance with Schedule 6A.

Item 2(1) of Schedule 6A lays down that subject to item 4, 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 a period ceased to be members of the nominating party, represents not less than 10 percent of the total number of seats held by the nominating party in that legislature. Item 2(2) provides that the seat held by a member referred to in sub-item (1) is regarded as having been allocated to the new party which the member represents.

Item 3(1) provides that subject to item 4, any party (the original party) which is represented in a legislature may -

(a) merge with another party, whether that party participated in an election or not; or

(b) subdivide into more than one party or subdivide and any subdivision may merge with another party, whether that party participated in an election or not, if the members of a subdivision leaving the original party represent not less than 10 per cent of the total number of seats

held by the original party in that legislature.

Item 3(2) lays down that if a party merges with another party or subdivides into more than one party or subdivides and any subdivision merges with another party in terms of sub-item (1), the members concerned remain members of that legislature and the seats held by them are regarded as having been allocated to the party which they represent pursuant to any merger, subdivision or subdivision and merger contemplated in sub-item (1).

As laid down in Item 4(1), the provisions of items 2 and 3 only apply -

(a) for a period of 15 days from the first to the fifteenth day of September in the second year following the date of an election of the legislature; and

(b) for a period of 15 days from the first to the fifteenth day of September in the fourth year following the date of an election of the legislature.

x x x

(3) During each period referred to in sub-item (1)(a) and (b) -

(a) a member of a legislature may only once change membership of a party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from such other party that he or she has been accepted as a member of that party; and

(b) a party may only once -

(i) merge with another party;

(ii) subdivide into more than one party; or

(iii) subdivide and any subdivision may merge with another party, by informing the Speaker of the legislature thereof in writing and by submitting to the Speaker written confirmation from the other party of the names of all members involved in the merger or subdivision, and that the party has accepted the merger; and

(c) no party represented in a legislature may -

(i) suspend or terminate the party membership of a member representing that party in that legislature; or

(ii) perform any act whatsoever which may cause such a member to be disqualified from holding office as such a member, without the written consent of the member concerned.

(4) A party which has not been registered in terms of any law applicable to the registration of political parties is regarded as a party for the purposes of this Schedule, but such a party must apply for registration

as a party in accordance with applicable law within the prescribed period. If the party is not registered within the permitted period, it is regarded as having ceased to exist, and the seats in question must be allocated to the remaining parties in accordance with applicable law.

According to item 5(1) after the expiry of a period referred to in item 4(1)(a) or (b), the composition of a legislature which has been reconstituted as a result of any conduct in terms of item 2 or 3 is maintained until the next election of that legislature or until the composition of the legislature is reconstituted in accordance with item 2 or 3.

Within seven days after the expiry of a period referred to in item 4(1)(a) or (b), each party represented in a legislature as contemplated in item 1 sub-item (1) must submit a list of its candidates to the Secretary of the legislature; and the Speaker must, within seven days, publish a notice in the *Gazette* which must reflect-

(a) the number of seats allocated to each party represented in that legislature; and

(b) the name of, and party represented by, each member.

Clause 6(1) of Schedule 6A 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.

After the Act came into operation in 2003, at the close of the window period which commenced from 21 March 2003 for a period of 15 days, 5 new parties had emerged thereby increasing the total number of parties in the National Assembly from 13 to 18. The altered composition of the political parties in the Assembly was as follows:

	In 1999	**In 2003**
African National Congress	266	275
DP	38	-
Democratic Alliance	-	46
Inkatha Freedom Party	34	31
New National Party	28	20
African Christian Democratic Party	6	7
United Democratic Movement	14	4
Freedom Front	3	3
United Christian Democratic Party	3	3
Pan Africanist Congress	3	2

SRI LANKA

The Parliament of Sri Lanka has been the witness to several defections. On two occasions, they did lead to the fall of the incumbent Governments. In 1964, a group of members from the Government side crossed over to the Opposition side and in 2001, 13 Government members joined the Opposition. On both the occasions, the Government collapsed.

However, in 2000, there was also an incident when just the opposite happened. Five members from Opposition joined the Government and thereby strengthened it.

Article 99(13) of the Constitution of 1978 provides for the Anti-defection Law. Under the law, when a member ceases by way of resignation, expulsion or otherwise, to be a member of a recognised political party or independent group on whose nomination paper his name appeared at the time of his becoming such member of Parliament, his seat becomes vacant upon the expiration of a period of one month from the date of his ceasing to be such member.

However, in case of expulsion of a member, his seat shall not become vacant if prior to the expiration of the said period of one month he applies to the Supreme Court by petition in writing, and the Supreme Court upon such application determines that such expulsion was invalid. Such petition shall be inquired into by three judges of the Supreme Court who shall make their determination within two months of filing of such petition. Where the Supreme Court determines that the expulsion was valid, the vacancy shall occur from the date of such determination.

Where the seat of a member becomes vacant, the candidate from the relevant recognised political party or independent group who has secured the next highest number of preferences shall be declared elected to fill such vacancy.

Independent candidates cannot contest individually. But they can contest under the symbol of an independent group and they would be subject to the provision of Article 99 (13). A nominated member too represents his party, and, therefore, there is no possibility of his charging the party affiliation.

However, in coalition partnership, a party can break away from the partnership without inviting the provision of the law.

TANZANIA

Paragraph (e) Sub-Article (1) of Article 71 of the Constitution of the United Republic of Tanzania, 1977 provides that a member of Parliament shall cease to be a member and shall vacate his seat in the National Assembly if he ceases to be a member of the party to which he belonged when he was elected or appointed to be a member of Parliament.

After the restoration of multi-party system of Government in 1992, one member of Parliament, Hon'ble Augustine Lyatonga Mrema crossed the floor. It so happened that on 24 February 1995, while participating in the discussion on the debate on a motion, he criticized the Government of the day, which he himself was serving. He was sacked the following day but he remained with his party *i.e.* Chama Cha Mapinduzi (CCM). In March the same year, he crossed the floor and joined another political party, namely, the National Convention for Construction and Reform (NCCR) and won a parliamentary seat.

TRINIDAD AND TOBAGO

Trinidad and Tobago got independence in 1962. Since then, the Parliament has witnessed defections referred to as 'crossing the floor', on quite a few occasions. In 1978, a member of the ruling party resigned from his party and became an independent member. Earlier, there was an instance in 1972 when, due to a 'No Vote Campaign', other political parties refused to take part in the elections and there was no Opposition in the Parliament, one member resigned from the Government benches and was appointed Leader of the Opposition. On another occasion, two members were expelled from the Opposition party and they joined the ruling party and were given ministerial portfolios.

An amendment was made to the Constitution in 1978 *vide* Act No.15/1978, thereby incorporating Section 49A of the Constitution which makes provisions for the member who crosses the floor to vacate his seat in Parliament after a period of fourteen days.

As per section 49A(1) of the Constitution where a member having been a candidate of a party and elected to the House 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 of those circumstances and the Speaker shall, at the next sitting of the House of Representatives, after he is so informed, make a declaration that the member has resigned from or has been expelled by the party, as the case may be. The 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.

Section 49A(2) provides that where within a period of 14 days of such a declaration by the Speaker, the concerned member does not constitute legal proceedings to challenge the allegation of his resignation or expulsion, he shall vacate his seat at the end of the said period of 14 days.

Section 49A(3) provides that if within the stipulated period of 14 days, the concerned member institutes legal proceedings challenging his resignation/expulsion, he shall not vacate his seat unless and until either the proceedings instituted by him are withdrawn; or the proceedings are finally determined by a decision upholding the resignation or expulsion, the decision being one that is not open to appeal or in respect of which the time allowed for an appeal has expired without an appeal being filed*.

Section 49A(4) lays down that from the date of the declaration by the Speaker, the member shall cease to perform his functions as a member of the House of Representatives and he shall resume the performance of such functions only if and when the legal proceedings are finally determined in favour of such member.

Section 49A (5) provides that Standing Orders shall make provision for the identification and recognition of the Leader in the House of Representatives of every party and for otherwise giving effect to this section. 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.

There are no provisions dealing with splits and mergers. In 1986, the ruling party came into Parliament with a majority of 33 members. However, during 1987, some members resigned from the party and formed themselves into a new party and remained in Parliament.

TUVALU

A distinctive feature of the Parliament of Tuvalu is that it does not have political parties. Therefore, there are no measures or laws to combat defections. Members are more or less independent individuals in the House. They are free to walk in or walk out of a group, i.e., the Government or the Opposition Group, as they wish or can choose to even remain alone.

The Parliament has witnessed several such cases of defection from the Government to the Opposition and *vice versa*. The nature of defection here is somewhat different in the sense that once the members (Government members in particular) realise that some of their colleagues are heading towards or involved in corruption, abuse of powers, etc., they defect to rid them off from power and form a new Government. The Parliament, having only fifteen members, is very vulnerable to such defections.

The consequence of such defections mostly is the fall of Government and

* Since the Court could pronounce on such matters, decisions can be appealed to the Court of Appeal and subsequently to the Privy Council.

formation of a new government. In one such incident, the defecting members included one Cabinet Minister and three Government Backbenchers who accused the outgoing Government of mishandling of public funds, and other associated actions.

UGANDA

Political defections in Uganda are not legally allowed. Article 83(1,g) of the Constitution of the Republic of Uganda 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. Apart from this, article 60 of the Constitution empowers the people to choose and adopt a political system of their choice through free and fair elections or referenda.

Accordingly, in 2000, there was a referendum and the people adopted a 'Movement Political System'. Under the system, individual merit is the basis for election to political offices. The system is broad based, inclusive and non-partisan. Therefore, the issue of defections does not arise.

Through an Act of Parliament, namely, the Movement (Amendment) Act, 2003 that came into existence on 12 November, 2003, the term of office of Movement leaders was extended until another referendum on political system is held in 2005.

UNITED KINGDOM

In the United Kingdom, changes of party membership do occur from time to time. However, the changes of party cause problems for the political parties concerned rather than for the House of Commons. In recent Parliaments, there have been instances where members have changed their party affiliations. Between 1979 and 1983, 31 members (nearly all from Labour) left their party mainly to join a newly created party called the Social Democratic Party (SDP); between 1987 and 1992, 3 members left their party, there were 2 expulsions and 2 withdrawals of whip (1 temporary); between 1992 and 1997, 4 members left their party, there were 8 withdrawals of whip (all temporary); 2 resignations of whip (1 temporary); and between 1997 and 2001, 2 members left their party, there were 4 withdrawls of whip or suspensions from party (2 temporary). It is pertinent to mention here that in May 1976, the Labour Party lost its majority in the House of Commons; this was due mainly to by-election defeats but also to one member changing party.

There are no laws or Standing Orders requiring members to register the party of which they are members or providing for any consequences if a member changes the party. A member who changes party is not required to resign. Similarly, a

member expelled from his party would retain his seat. Seating in the House is governed by convention, and not rules, but such a member would normally sit separately from party members.

Members of the House of Lords are not elected and hold their seats for life. The House of Lords contains members from all the main political parties in the United Kingdom. However the party balance is influenced indirectly only by elections, in that the Government can appoint as many of their supporters as they wish to seats in the House of Lords. Approximately one-third of the members of the House of Lords are not affiliated to any political party. They are known as 'cross benchers' and they are politically independent. When a person is awarded a seat in the House of Lords, he does not immediately take a party whip and he is not required to declare his political affiliation. Members of the House of Lords can choose to take a party whip at any time and there is no deadline for them to do so. Equally, they can resign a party whip at any time and this has virtually no impact on the political composition of the House. The political balance of the House of Lords is, therefore, fluid. Party labels are not something that concern the House authorities. The House of Lords does not recognise defection as a problem or an issue of concern.

On rare occasions, member of the House of Lords do change party affiliation or are expelled from their parties. There are no punitive measures imposed by the House on any member who can change their party affiliation. Similarly, there are no rules to stop independent members of the House (or cross bench Peers) joining a political party at any time. If a member of the House of Lords is expelled from his party, he is not disqualified from the membership of the House. The member would either join another party or sit as an independent member on fee cross benches which are separate seat from the party political seats. From the House's point of view, a change of party affiliation is not a problem. In the House of Lords, the House authorities do not get involved in the political affiliation of members. The individual political parties may have methods of trying to stop their members defecting but this is a matter for them not the House.

ZAMBIA

The provisions of article 71 of the Constitution of Zambia, Cap.1 of the Laws of Zambia on the tenure of office for members of the National Assembly, contains clause which states that an elected member of the National Assembly in Zambia shall vacate his seat in the Assembly if he becomes member of a political party other than the party of which he was an authorized candidate when he was elected to the National Assembly or, if having been an independent candidate, he joins a

political party or having been a member of a political party, he becomes independent. This provision prohibits political defection or change of party affiliation. It also regulates situation where due to violation of the law, a political party is de-registered or out of its voluntary action a party dissolves itself leaving behind members who belonged to that party, without a party. Members who find themselves in such situation lose their seats in the House.

The question of defection or change of party affiliation does not arise in case of nominated members because the powers to nominate members to the House is vested in the President and members who are nominated by the President actually become members of the ruling party and they can lose their seats if the President relieves them of their membership in the House.

Where the Speaker receives correspondence either from a member himself or from his party that a member has ceased to be a member of that Party either by voluntary action of the member himself or has been expelled by the Party itself, the Speaker has the mandate of the law in such a situation to inform the President and the Electoral Commission that a vacancy has occurred in the membership of the National Assembly and in the case of an elected member, the President proceeds to direct the Electoral Commission to organize a by-election. In the case of a nominated member, the President may immediately replace the member or do the replacement later. A member who is elected as an Independent to the House and joins a political party automatically loses his seat.

As regards a split, it amounts to a change of party affiliation and is dealt with as such under the provisions of law.

Cases where members have changed their party or have become Independents are dealt with by the Standing Orders Committee whose report is submitted for adoption by the House.

There have been cases in the Zambian Parliament where members have defected or changed their party affiliations and lost their seats in the House. Some of the members have challenged the decisions of the Standing Orders Committee in this regard in the courts of law under the court remedy of judicial review. In all these cases, the courts have ruled in favour of the decisions taken by the Speaker through the Standing Orders Committee.

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. Article 69 (1) of the Constitution states as follows: "There shall be a Speaker of the National Assembly who shall be elected by the members of the Assembly from among persons who are qualified to be elected as members of the Assembly but

are not members of the Assembly".

However, in the case of Deputy Speaker article 70 (1) states: " There shall be a Deputy Speaker of the National Assembly who shall be elected by the members of the Assembly from among the members of the Assembly".

It should, therefore, be noted that in the case of the Deputy Speaker, the member holding such a position comes to the House on a party ticket and if he, changes his party status, he loses his membership to the National Assembly.

ZIMBABWE

Between 1981 and 1987, two members of Parliament defected from Zimbabwe African People's Union (ZAPU), the then main Opposition, to Zimbabwe African National Union Patriotic Front (ZANUPF), the Ruling Party. There was no law then to stop them from doing so. In 1989, through the Constitutional Amendment No.9, Section 41(e) was added to the Constitution which provides that the seat of a member of Parliament shall become vacant, if being a member, elected among the 120 members by voters registered on the common roll for the 120 common roll constituencies, he ceases to be a member of the political party of which he was a member on the date of his election to Parliament and the political party concerned, by written notice to the Speaker, declares that the member has ceased to represent its interests in Parliament. However, 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. There is nothing stopping independent and nominated members from joining a political party of their choice after election or nomination. Since the Speaker is not a member of Parliament, Section 41 (e) would not apply to him. But the Deputy Speaker being the member does come under the provision of the Law.

B. POSITION AT A GLANCE

B. Position at a Glance

A total of 65 world Parliaments are covered in this study, out of which 55 Parliaments have had the experience of political defection and 10 do not have such experience; 30 have framed laws and 35 have not; 27 Parliaments have both the experience and the law, 28 have experience but not the law; 7 have neither the experience nor the law and 3 have laws but no experience.

Of the 65 world Parliaments, 40 belong to the Commonwealth and remaining 25 are outside the Commonwealth. Out of the 40 Parliaments in the Commonwealth, 34 Parliaments have the experience of political defection, while 6 do not have any such experience. As regards anti-defection laws, 23 Parliaments in the Commonwealth have framed such laws while 17 do not have any such laws. Twenty Parliaments have both the experience of political defection and the laws, 14 Parliaments have experience of political defection but have not framed any law in this regard as yet; 3 Parliaments have neither the law nor the experience and 3 Parliaments have laws but do not have any cases of defection.

As far as Parliaments outside the Commonwealth (numbering 25) are concerned, 21 Parliaments have the experience of political defections and 4 do not have any cases of political defection; 7 have framed laws and 18 do not have any law; 7 Parliaments have both the experience and the laws and 14 have cases of political defection, but do not have any law; 4 Parliaments have neither the experience nor the law.

The Tabular Statement, Chart and Graphs given below indicate the position in a nutshell.

Statement*

Sl. No.	Name of the Country/ Parliament	Experience Yes/No	Law Yes/No	Salient features	Remarks, if any
1.	*Algeria*	N	N	-	-
2.	*Angola*	N	N	-	The Constitution of Angola does not allow change of party during the term of the legislature.
3.	Anguilla	N	N	-	-
4.	Australia	Y	N	-	A member changing party allegiance retains his seat.
5.	Bangladesh	Y	Y	Termed as 'dispute'; vacation of seat by a member in case he resigns from or votes against his party; if a dispute arises any person or a member can file petition. Thereafter, the Speaker sends a statement within thirty days to the Election Commission	

* The position about Commonwealth Parliaments given here is very brief. For detailed information, please see the write-ups on individual Commonwealth Parliaments given in Part A of Chapter 3. Names of non-Commonwealth Parliaments are shown in *italics*.

				which gives its decision within one hundred and twenty days after receiving the statement; the EC's decision in the matter is final, and the member ceases to be a member thereafter.	
6.	Barbados	Y	N	-	A Constitution Review Commission had recommended that an anti-defection law be enacted.
7.	Belize	Y	Y	Constitutional amendment w.e.f. January 2001; resignation from the party on whose ticket the member was elected and crossing the floor amount to defection; once notified by the Leader of the party, within seven days, to the Speaker in writing, the Speaker, if satisfied, makes the declaration at the next sitting of the House; the member may appeal to	

				the Supreme Court within twenty-one days of such decision, whose decision shall be final.	-
8.	Bermuda	Y	N	-	There is no requirement or firm expectation that a member of Parliament who switches political parties must resign from the Parliament when doing so.
9.	Botswana	Y	N	-	A motion was passed in 1998 urging members and councillors who defect to vacate their seats. Overall, members supported the idea that the seat of the defecting member should be declared vacant.
10.	*Bulgaria*	Y	Y	-	-
11.	Cameroon	Y	N	-	-
12.	Canada	Y	N	-	Though members are elected with a party affiliation, they are not obliged to retain that party

					label during the whole of their mandate. A member who changes party allegiance is under no obligation to resign his seat.
13.	*Chile*	Y	N	-	-
14.	*Croatia*	N	N	-	-
15.	Cyprus	N	N	-	-
16.	*Czech Republic*	Y	N	-	-
17.	Dominica	Y	N	-	-
18	*Finland*	Y	N	-	-
19.	*France*	Y	N	-	-
20.	*Gabon*	Y	Y	-	-
21.	*Germany*	Y	N	-	-
22.	Ghana	Y	Y	Article 97(1) of the Constitution of Ghana *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. Similarly, he	Guyana has proportional representation (List) System.

				shall also vacate his seat in Parliament if he being elected as an independent joins a political party.	
23.	Grenada	Y	N	-	-
24.	Guyana	Y	Y	Vide Constitutional Amendment in 2000, Paragraph (3) was inserted in article 156 of the Constitution 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.	
25.	India	Y	Y	Tenth Schedule to the Constitution, inserted by 52nd Constitutional Amendment Act lays down the provisions; a member is disqualified on ground of defection if he voluntarily gives	Before the passing of the Constitution (Ninety-first Amendment) Act in 2003, the law provided that no disqualification would be incurred in cases where a split in a party was

				up membership of his original party or votes or abstains from voting in the House contrary to any direction of his party; an Independent member is disqualified if he joins a political party after his election; a Nominated member is disqualified if he joins a political party after six months of his nomination; no disqualification would be incurred in case of a merger by not less than two-thirds of the members of a legislature party with another party; the question of disqualification of members under the law is decided by the Chairman or the Speaker of the respective House but cannot be taken up *suo moto;* a member has to file a petition;	claimed, provided that in the legislature party not less than one-third of its members decided to quit the party. The above mentioned amendment has now deleted this provision altogether.

				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; all the questions relating to the decisions given by the Presiding Officers are subject to judicial review.	
26.	*Israel*	N	N	-	-
27.	*Italy*	Y	N	-	-
28.	Jamaica	Y	N	-	-
29.	*Japan*	Y	Y	-	-
30.	Kenya	Y	Y	Section 40 of the Constitution provides for forthwith vacation of seat by a member who defects. Under the Section if a member of the National Assembly who, having stood at election as an elected member with the support of or as a supporter of a	

				political party, or having accepted appointment as a nominated member or as a supporter of a political party, either - (a) resigns from that party at a time when that party is a parliamentary party; or (b) having, after the dissolution of that party, been a member of another parliamentary party, resigns from that other party at a time when that other party is a parliamentary party, shall vacate his seat forthwith unless in the meantime that party of which he was last a member has ceased to exist as a parliamentary party or he has resigned his seat provided that this subsection shall not apply to any member who is elected as Speaker.	

31.	Lesotho	Y	Y	The National Assembly Elections Act, 1992 provides for disqualification of a member if he resigns from his party or crosses the floor; the law is applicable only to the proportional representation members; the Presiding Officer takes up the question of disqualification *suo moto;* decision of the Presiding Officer is appealable by way of a motion made after a notice requesting for a review by the House; on expulsion from the party, the member does not lose his membership, but he is seated separately; independent members will not lose seat if they join a political party.	Lesotho has Mixed Member Proportional Electoral System (comprising 80 constituency seats and 40 proportional seats: total 120 seats).
32.	Malawi	Y	Y	Constitution lays down a provision to curb defection; the	

				term used is 'crossing the floor'; the speaker declares vacant seats of those members who voluntarily cease the membership of their party or join another party or association or organization whose activities are political in nature; decisions of the Speaker are appealable in a Court of Law; By virtue of section 65(2) of the Constitution, members are fully protected against loss of seats for voting against party position on various matters; Independent members can join a political party after elections.	
33.	Malaysia	Y	N		There was a Private Member's Bill in 1978 [The Members of Parliament (Prevention of Defections) Bill, 1978], which

					sought to prohibit defection of elected representatives by requiring a member of Parliament to vacate his seat within 30 days of his resignation or expulsion from the party on whose ticket he was originally elected. The Bill could not be enacted.
34.	*Mali*	Y	N	-	-
35.	Mozambique	Y	Y	The law provides that a Deputy loses his seat when he becomes a member or exercises duties in another party, other than the party through which he was elected. The definite loss of the mandate of Deputy is declared by the Standing Committee of the Assembly, a body chaired by the Speaker. It should be announced in the plenary and published in the	-

				Government Gazettee. There is choice to appeal against the sanctions for the plenary within eight days after notification. If a Deputy resigns or is expelled from his party or parliamentary bench and he remains not affiliated to another party, he becomes an Independent.	
36.	Namibia	N	N	-	If a member defects or is expelled from his party, he loses his seat in the Parliament; any action to be taken with regard to defection is handled within the party. The Leader of the party informs the Speaker about party's decision. The Presiding Officers are not concerned with the situations like splits and mergers and hence they do not deal with the

					developments taking place within the parties.
37.	Nauru	Y	N	-	In Nauru, the problem is that of different nature; Parliament is not represented by political parties but by individual members elected on the basis of adult suffrage. Once elected they either become the members of ruling group called 'Caucus' or the opposition called 'Backbenchers'; the members of 'caucus' often shift their allegiance to 'Backbenchers' to form coalition and bring down the Government of the day by bringing no-confidence motion.
38.	New Zealand	Y	Y	Electoral(Integrity) Amendment Act 2001 provides that a	Not a permanent piece of legislation will automatically

				Member's seat falls vacant if he ceases to be a member of or is expelled from his parliamentary party; Speaker cannot raise the issue on his own discretion; as the advice in the case of resignation can only come from the member, there is unlikely to be any conflict; -Speaker has no power to review Parliamentary Party's decision in case of expulsion; -does not apply to Independent members or in case of split.	expire at the time of next General Election due in 2005.
39.	*Niger*	Y	Y	-	-
40.	Nigeria	N	Y	Known as 'carpet crossing',not defined anywhere; Section 68(1)(g) of the Constitution deals with defection; Member has to vacate his seat if he joins another party; however the provision is not applicable to a split or merger- no	The Constitutional Provision is yet to be politically and legally tested.

				number as to what constitutes a split or merger has been specified.	
41.	*Norway*	Y	N	-	-
42.	Pakistan	Y	Y	Article 63A lays down the grounds of defection on which a member of a parliamentary party in a House is disqualified. It provides that if a member of a parliamentary party composed of a single political party in a House: (a) resigns from membership of his political or joins another parliamentary party; or (b) votes or abstains from voting in the House contrary to any direction issued by the parliamentary party to which he belongs, in relation to- (i) election of the Prime Minister or the Chief Minister, (ii) a vote of Confidence or a vote	-

				of No-confidence, or (iii) a Money Bill, - he may be declared in writing by the Head of the parliamentary party to have defected from the political party, and the Head of the parliamentary party may forward a copy thereof to the Presiding Officers and the member concerned. A member of a House shall be deemed to be a member of a Parliamentary Party if he, having been elected as a candidate or nominee of a political party which constitutes the Parliamentary party in the House or, having been elected otherwise than as a candidate or nominee of a political party, has become a member of such Parliamentary party after such election by means of a declaration	

				in writing. Upon receipt of the declaration, 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. Where the Election Commission confirms the declaration, the member shall cease to be a member of the House and his seat shall become vacant. Any party aggrieved by the decision of the Election Commission may, within thirty days, prefer an appeal to the Supreme Court, which shall decide	

				the matter within three months from the date of the filing of the appeal.The said provision is not applicable to the Chairman or the Speaker of the House.	
43.	Papua New Guinea	Y	Y	The Integrity of Political Parties and Candidates Law, which came into force for the 2002 elections, prevents politicians from changing party affiliation. It also envisages penalties if a member of the legislature leaves the party with which he was aligned when first elected and joins another party or becomes Independent. If the member chooses to change the party then he is required to face the 'leadership tribunal' (the Ombudsman Commission), which shall decide whether the grounds for	

				resignation are valid. Under the legislation, valid resignations are possible only when the party has breached its own constitution or when the party has been declared insolvent. If the tribunal rules against the member, a by-election must be held. Members elected with party endorsement must vote in accordance with their party's position on key issues like the election of a Prime Minister, the Budget, votes of No-confidence and constitutional amendments. A member may abstain but if he votes against his party's position, he may face a range of possible penalties including loss of membership.A member shall also vacate his seat in Parliament if having been elected as	

				an independent candidate, he joins a political party.	
44.	*Poland*	Y	N		In Poland, although there are no laws relating to defection, leaders of political parties have the right to issue whip to their members to vote in a particular way. However, when a member is expelled from the party for violating the whip, he does not lose his parliamentary seat.
45.	*Portugal*	Y	Y	-	-
46.	*Romania*	Y	Y	-	The law relating to changing party affiliation is mentioned in the Standing Orders of the two Chambers and also in the law of the political parties.
47.	*Rwanda*	Y	N	-	-
48.	Samoa	N	Y	-	In Samoa, the Electoral Amendment Act

					2005 which came into force on 1 April 2005 amended Part IIA 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 (which should not be less then eight) 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 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.
49.	Seychelles	Y	N	-	-
50.	Sierra Leone	Y	Y	Section 77, Subsections (1)(k)(L) and (m) of the Constitution of 1991 provides that a member shall vacate seat, if he ceases to be a member of that political party of which he was 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;	

				or by his conduct in the Parliament by sitting and voting with members of a different party, the Speaker is satisfied after consultation with the Leader of that member's party that the member is no longer a member of the political party under whose symbol he was elected to Parliament; or if being elected to Parliament as an Independent candidate, he joins a political party in Parliament. Both collective and individual defections are penalized.	
51.	Singapore	Y	Y	Articles 46(2)(b) and 48 of the Constitution provide that a non-constituency member's seat falls vacant if he is subsequently elected as a member of Parliament for any	

				constituency; a nominated member's seat falls vacant if he stands as a candidate for any political party or is elected to a constituency seat; and if a member is expelled from his party, he will lose his seat in Parliament.	-
52.	South Africa	Y	Y	Section 47 of the Constitution, as amended, provides *inter alia* that a person loses membership of the National Assembly if that person ceases to be a member of that party that nominated that person as a member of the Assembly, unless that member has become a member of another party in accordance with Schedule 6A which *inter alia* provides for a mechanism of window period.	

				The Loss or Retention of Membership of National and Provincial Legislatures Act provides for a mechanism of 15-day window period during which members could change their party membership only once by written notification to the Speaker of the legislature without losing their seats; Item 2(1) of Schedule 6A lays down that subject to item 4, 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 a 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; a party could merge, subdivide, or subdivide and merge only once by written notification to the Speaker of the legislature; a member could resign from a party to form another party by written notification to the Speaker of the legislature. The time of the window periods are in the second and fourth years after a general election and once off at the commencement of the Act. The Act commenced on 20 March 2003 after	

				a proclamation, published in Government Gazette and the first (i.e. after the commencement of the Act), window period started from the midnight of 21 March 2003 and closed at the midnight of 4 April 2003. During this period, the party affiliations changed and number of parties in the House rose from 13 to 17.	
53.	Sri Lanka	Y	Y	According to Article 99(13) of the Constitution of 1978 if a member resigns, is expelled or otherwise ceases to be a member of a recognized political party or independent group on whose nomination paper his name appeared at the time of his becoming such member of Parliament, his seat becomes vacant upon the expiration of the	

				period of one month from the date of his ceasing to be such member.In case of expulsion, a member's seat will not fall vacant if within that one-month period, he appeals to the Supreme Court. The Court shall make its determination within two months of receiving such matter. If the expulsion is valid, the member's seat will fall vacant after such determination. A coalition partner does not come under the purview of the law.	
54.	*Sudan*	Y	N	-	-
55.	*Sweden*	Y	N	-	-
56.	*Switzerland*	Y	N	-	-
57.	Tanzania	Y	Y	Article 71, Sub-article(1) Paragraph(e) of the Constitution provides that a member vacates his	

				seat in the National Assembly in case he ceases to be a member of the party.	
58.	*Thailand*	Y	Y	Section118 of the Constitution provides that membership of the House of Representatives terminates upon resignation by a member from membership of his political party or his political party passing a resolution, with the votes of not less than three-fourths of the joint meeting of the Executive Committee of that political party and members of the House of Representatives belonging to that political party, terminating his membership of the political party. In such cases, his membership shall be deemed to have terminated as	

				from the date of the resignation or the resolution of the political party except where such member of the House of Representatives appeals to the Constitutional Court within thirty days as from the date of the resolution of the political party.	
59	Trinidad & Tobago	Y	Y	An Amendment to the Constitution in 1978 vide Act No. 15/1978 incorporated Section 49A, which *inter alia* provides that where a member resigns from or is expelled by 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	The Act requires that the provisions are to be implemented to give life to Section 49A. This was never done.

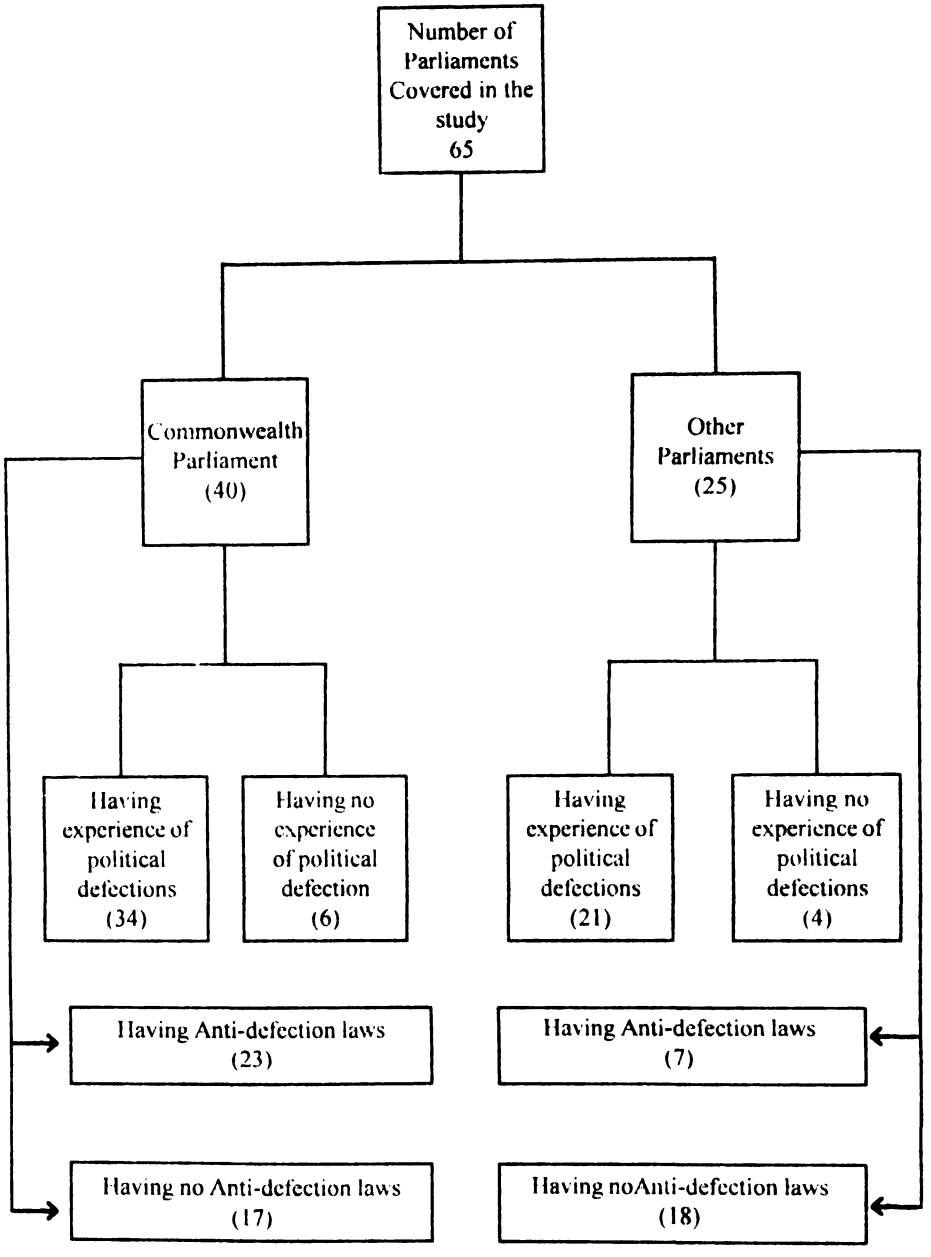
				declaration about the resignation/ expulsion of the member. A member who has been declared as having resigned from or been expelled by the party, has a right to institute legal proceedings challenging his resignation/expulsion within 14 days. If he does not do so, he shall vacate his seat at the end of the said period of 14 days. If within the stipulated period, the concerned member institutes legal proceedings challenging his resignation or expulsion, he is not required to vacate his seat until - (i) the proceedings instituted by him are withdrawn or (ii) the question has been finally determined by a decision upholding the resignation or expulsion.	

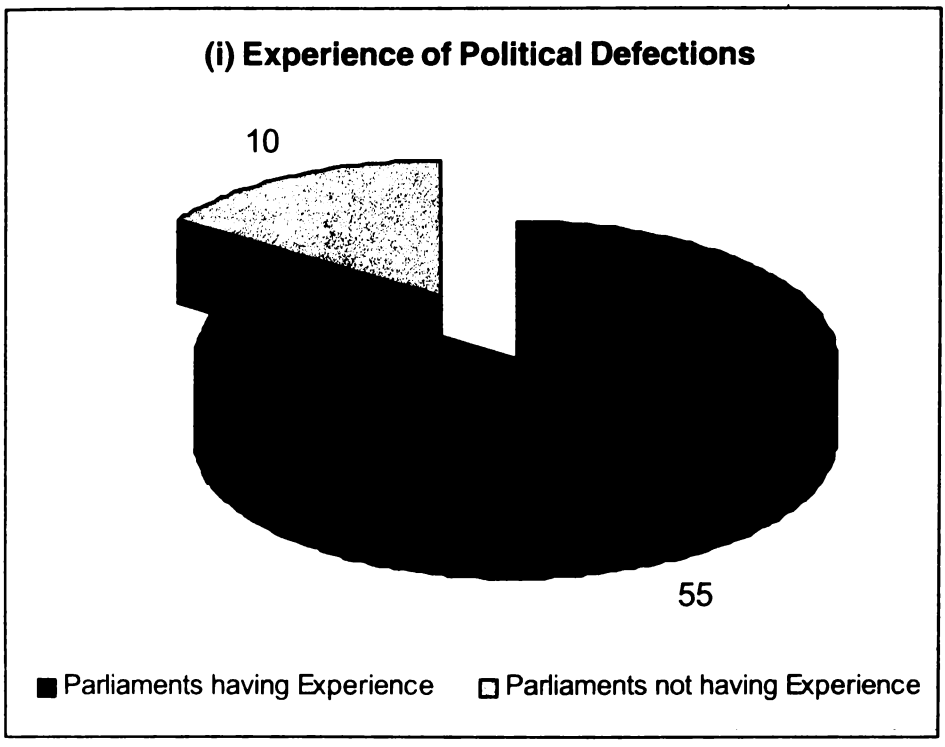
60.	Tuvalu	Y	N	-	A member who defects, remains a member of the House and sits among the new Group. In the Parliament of Tuvalu, there are no political parties and the members are independent individuals in the House.
61.	Uganda	N	Y	Political defection is not legally allowed; Article 83(1,g) of the Constitution provides that a member who leaves his political party and joins another party or remains in Parliament as an independent shall vacate his seat	-
62.	United Kingdom	Y	N		There is no bar on members changing their party.
63.	*United States of America*	Y	N	-	-
64.	Zambia	-	Y	Article 71 of the Constitution, Cap. 1 of the Laws of	

				Zambia provide that a member's seat falls vacant if he joins another party or becomes independent.	
65.	Zimbabwe	Y	Y	Under Section 41(e), the seat of a member falls vacant if being a member, elected among the 120 members by voters registered on the common roll for the 120 common roll constituencies, he ceases to be a member of the political party of which he was a member on the date of his election to Parliament and the political party concerned, by written notice to the Speaker, declares that the member has ceased to represent its interests in Parliament. However, the circumstances under which a member can be deemed to have	Since the Speaker is not a member of Parliament, Section 41 (e) would not apply to him. But the Deputy Speaker being a member does come under the provision of the Law.

				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. There is nothing stopping independent and nominated members from joining a political party of their choice after election or nomination.	

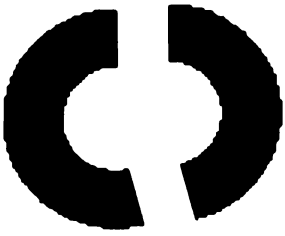
Chart


Number of Parliaments Covered in the study 65
Commonwealth Parliament (40)
Other Parliaments (25)
Having experience of political defections (34)
Having no experience of political defection (6)
Having experience of political defections (21)
Having no experience of political defections (4)
Having Anti-defection laws (23)
Having Anti-defection laws (7)
Having no Anti-defection laws (17)
Having noAnti-defection laws (18)



Parliaments having Experience of Political Defection (55)	Australia, Bangladesh, Barbados, Belize, *Bulgaria*, Bermuda, Botswana, Cameroon, Canada, *Chile*, *Czech Republic*, Dominica, *Finland*, *France*, *Gabon*, Ghana, Guyana, *Germany*, Grenada, India, *Italy*, Jamaica, *Japan*, Kenya, Lesotho, Malawi, Malaysia, *Mali*, Mozambique, New Zealand, Nauru, *Niger*, *Norway*, Pakistan, Papua New Guinea, *Poland*, *Portugal*, *Romania*, *Rwanda*, Seychelles, Sierra Leone, Singapore, Sri Lanka, South Africa, *Sudan*, *Sweden*, *Switzerland*, Tanzania, *Thailand*, Trinidad & Tobago, Tuvalu, United Kingdom, *United States of America*, Zambia, Zimbabwe
Parliaments having no Experience of Political Defection (10)	*Algeria*, *Angola*, Anguilla, *Croatia*, Cyprus, *Israel*, Namibia, Samoa, Uganda, Nigeria,

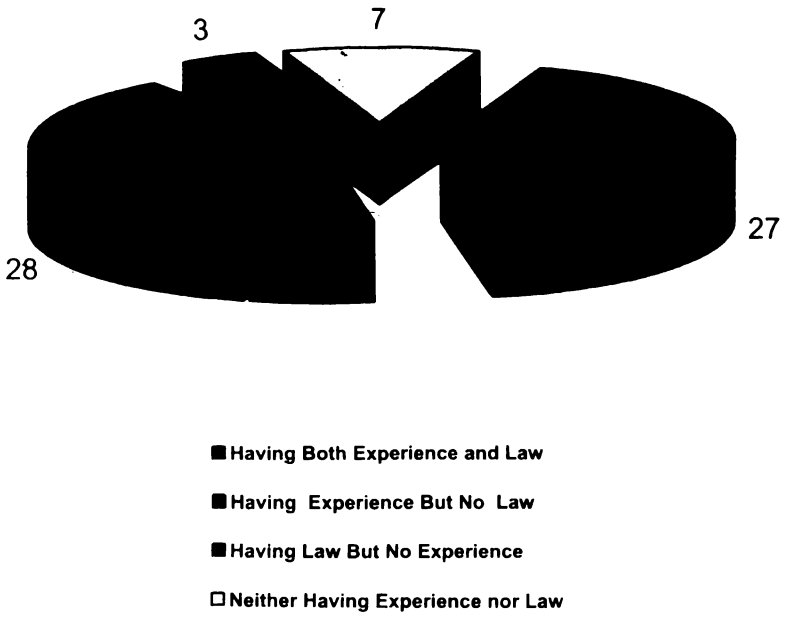
(ii) Anti-defection Laws



■ Parliaments having Anti-defection Law
■ Parliaments not having Anti-defection Law

Parliaments having Anti-defection Laws (30)	Bangladesh, Belize, *Bulgaria, Gabon,* Ghana, Guyana, India, *Japan,* Kenya, Lesotho, Malawi, Mozambique, New Zealand, *Niger,* Nigeria, Pakistan, Papua New Guinea, *Portugal, Romania,* Sierra Leone, Samoa, Singapore, South Africa, Sri Lanka, Tanzania, *Thailand,* Trinidad & Tobago, Uganda, Zambia, Zimbabwe
Parliaments not having Anti-defection Laws (35)	Australia, *Algeria, Angola,* Anguilla, Barbados, Bermuda, Botswana, Cameroon, Canada, *Chile, Croatia,* Cyprus, *Czech Republic,* Dominica, *Finland, France, Germany,* Grenada, *Israel, Italy,* Jamaica, *Mali,* Malaysia, Namibia, Nauru, *Norway, Poland, Rwanda,* Seychelles, *Sudan, Sweden, Switzerland,* Tuvalu, United Kingdom, *United States of America*

(iii) Anti-defection Cases/Laws



Parliaments having both Experiences and Laws (27)	Bangladesh, Belize, *Bulgaria, Gabon,* Ghana, Guyana, India, *Japan,* Kenya, Lesotho, Malawi, Mozambique, New Zealand, *Niger,* Papua New Guinea, Pakistan, *Portugal, Romania,* Sierra Leone, Singapore, South Africa, Sri Lanka, Tanzania, *Thailand,* Trinidad & Tobago, Zimbabwe, Zambia
Parliaments having Experiences but no Law (28)	Australia, Barbados, Bermuda, Botswana, Cameroon, Canada, *Chile, Czech Republic,* Dominica, *Finland, France, Germany,* Grenada, *Italy,* Jamaica, *Mali,* Malaysia, Nauru, *Norway, Poland, Rwanda,* Seychelles, *Sudan, Sweden, Switzerland,* Tuvalu, United Kingdom, *United States of America*
Parliament having neither Experience nor Law (7)	*Algeria, Angola,* Anguilla, *Croatia,* Cyprus, *Israel,* Namibia
Parliaments having Laws but not having Experience (3)	Nigeria, Uganda, Samoa

CHAPTER FOUR
THE INDIAN SCENARIO

4

The Indian Scenario

Although political defections had occurred in India even prior to Independence, they assumed alarming proportions during 1960s, which gave rise to serious thought for enacting legislation to curb the menace. After long deliberations by the Government and other institutions, the Anti-defection Law as contained in the Constitution (Fifty-second Amendment) Act was passed in 1985.

Salient Features of Constitution (Fifty-second Amendment) Act, 1985

The basic idea behind Anti-defection Law was to prohibit defection by stipulating that the defectors by their act of switching party loyalties could lose their membership of the House. To create a viable deterrence, it envisaged a firm statutory mechanism that discouraged the potential defector from changing party affiliation. Accordingly, 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 (*i.e.* the Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on ground of defection. In brief, some of the main provisions of the Tenth Schedule are given below:

(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 gives up his membership of such political party or votes or abstains from voting in the House contrary to any direction of such party;

(ii) an Independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election;

(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;

(iv) no disqualification would be incurred in cases where split* in a legislature party or merger of a legislature party with another is claimed provided that in the event of a split in the legislature party not less than one-third of its members decide to quit the party and in case of a merger the decision is supported by not less than two-third of the members of the legislature party concerned;

(v) 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;

(vi) all proceedings in relation to any question as to disqualification of a member of a House under the Tenth Schedule shall 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; and

(vii) notwithstanding anything in the Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under the Tenth Schedule#.

Anti-defection Rules

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 *w.e.f.* 18 March 1986. The Rules *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

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* Since omitted by Constitution (Ninety-first Amendment) Act, 2003.

\# Held *ultra vires* by the Hon'ble Supreme Court in their majority opinion in Kihota Hollohon *vs* Zachilhu & Others Case on the ground of its non-ratification by the State Legislatures (AIR 1993, SC 412).

regarding such members as in Form I 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 regulations/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.

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.

Paragraph 8(3) of the Tenth Schedule provides that any wilful 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.

Petitions seeking Disqualification in Lok Sabha and Rajya Sabha

A study of the cases in the Union Legislature shows that a total of 39 petitions for disqualification were filed till the Thirteenth Lok Sabha in 16 cases. Of these, 13 petitions were allowed as a consequence of which 13 members were disqualified from the membership of the Lok Sabha. The break up of the 13 members who were disqualified is - one member, *viz.* Shri Lalduhoma in the Eighth Lok Sabha, eight members, *viz. Sarvashri* Basavraj Patil, Hemendra Singh Banera, Vidyacharan Shukla, Sarwar Hussain, Bhagey Gobardhan, Devananda Amat, Dr. Bengali Singh and Dr. Shakeelur Rehman in the Ninth Lok Sabha and four members, *viz. Sarvashri* Ram Sunder Das, Govinda Chandra Munda, G.M. Khan and Ramabadan in the Tenth Lok Sabha. It would be of interest to note that in the case of four members, who were disqualified under orders of Speaker during the Tenth Lok Sabha, the High Court granted stay on the order of the Speaker till disposal of the writ petitions. Before the writ petitions could, however, be disposed of, the Tenth Lok Sabha was dissolved. Consequently, the said four members continued to remain members of the Tenth Lok Sabha till its dissolution. Thus out of 13 members who were declared disqualified under orders of Speaker, in effect only nine of them actually stood disqualified. As regards the remaining 26 petitions, 19 were dismissed,

which include those petitions, which were dismissed on technical grounds, *viz.* non-compliance of provisions of the Anti-defection Rules. These apart, seven petitions were rendered infructuous due to dissolution of the respective Lok Sabhas. *Table* 1, *Statement* 1 and *Graphs* 1 and 2 provide the position under the relevant provisions pertaining to disqualification in Lok Sabha.

As for Rajya Sabha, *Statement* 5 and *Table* 5 show that two petitions for disqualification were filed, as a consequence of which, both the members against whom petitions were filed *viz.* Mufti Mohamad Sayeed and Satya Pal Malik, were disqualified.

Splits and Mergers in Lok Sabha and Rajya Sabha

There have been as many as 22 claims for splits and 13 claims for mergers in the Lok Sabha. Maximum number of claims for splits, *i.e.* 10, were made during the Thirteenth Lok Sabha, which was followed by five during the Tenth Lok Sabha, while maximum number of claims for mergers were made during the Tenth Lok Sabha, which was six, followed by five during the Thirteenth Lok Sabha. In the Tenth Lok Sabha, of the five claims for splits, in two cases after effecting splits, the split away groups merged with another legislature party. In the Tenth Lok Sabha, Janata Dal was split twice. In the Thirteenth Lok Sabha, Janata Dal (United) was split thrice. In another case, Rashtriya Janata Dal (Democratic), which came into being as a consequence of the split in the RJD, underwent two more splits. While *Statement* 2, *Table* 2 and *Graph* 3 show the position with regard to cases of split in Lok Sabha, *Statement* 3, *Table* 3 and *Graph* 4 provide information regarding merger cases in Lok Sabha.

In the Rajya Sabha, there have been 10 claims for split and 13 claims for merger since the coming into force of the Tenth Schedule, as indicated in Table 6 and 7, respectively.

Declaring members Unattached

In Lok Sabha, there have been in all seven cases where 35 members were declared as unattached, as indicated in *Statement* 4 and *Table* 4. Insofar as State Legislatures are concerned, there have been four cases in which four members were declared unattached, as indicated in Table 11.

Nominated Members joining Political Parties

Para 2(3) of the Tenth Schedule to the Constitution stipulates that a nominated member of a House shall be disqualified for being a member of the House if he

joins any political party after the expiry of six months from the date on which he takes his seat after complying with the the requirements of article 99* or, as the case may be, article 188@. While *Statement 4* contains details of the seven cases of nominated members joining political parties in the Lok Sabha within the stipulated period of six months, *Statement 8* shows five such cases in the Rajya Sabha

*Disqualification Cases in State Legislatures***

As regards the State Legislative Assemblies, information on 164# petitions for disqualification, involving a total of 97 cases, has been received for the present study. Of these, petitions in 78 cases were filed under para 2(1)(a) and in 25 cases under para 2(1)(b) of the Tenth Schedule to the Constitution of India. While maximum number of cases under para 2(1)(a) was filed in the State of Haryana (18 cases), the maximum number of cases under para 2(1)(b) was filed in Uttar Pradesh (12 cases). Out of the total 97 cases, petitions in 46 cases were allowed and 41 cases disallowed. In 10 cases, petitions were either rendered infructuous or declared inadmissible or not admitted.

Statements 9 to 72 give a brief state-wise account of cases of disqualification of members and of splits and mergers in various State Legislative Assemblies. As would be seen a total of 113 MLAs were disqualified in 46 cases. State-wise figures are: Andhra Pradesh-one, Assam-seven, Goa-12, Gujarat-one, Haryana-11, Kerala- one, Madhya Pradesh-eight, Maharashtra-seven, Manipur-nine, Meghalaya-seven, Nagaland-15, Orissa-two, Punjab-23, Tamil Nadu-three and Pondicherry-six. The highest number of 23 MLAs were disqualified in Punjab followed by 15 MLAs in Nagaland, 12 in Goa and 11 in Haryana. It is interesting fact to note that of the total 113 MLAs disqualified in the State Legislative Assemblies, as many as 38 MLAs belonged to the Northeastern states of Assam, Manipur, Meghalaya and Nagaland. On the other hand, the Southern states of

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* Every member of the either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

@ Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

** Analysis of cases in the State Legislatures is based on information received from the Legislature Secretariats. While Jammu and Kasmir Legislature Assembly has intimated that there has been no case under Anti-defection Law, no information is available in case of Jharkhand and Tripura.

\# While petitions in some cases were received under both para 2(1))(a) and 2(1)(b), multiple petitions were filed in some other cases.

Andhra Pradesh, Karnataka, Kerala and Tamil Nadu accounted for a total of five MLAs being disqualified. *Table* 8 and *Graph* 5 to 6 provide details about cases of disqualification of members in State Legislative Assemblies.

Cases of Splits and Mergers in State Legislatures

As per information received from the State Legislative Assemblies, there have been in all 68 cases of splits and 81 cases of mergers; as shown in *Table* 9 and 10 and *Graph* 7 and 8 respectively. The State of Uttar Pradesh accounts for the maximum number of splits, *viz.*, 24, and also the maximum number of mergers, *viz.*, 27. As regards the State Legislative Councils, there have been seven claims of splits and seven of mergers. An analysis of split and merger cases shows that ambiguity in the provisions created fertile ground for engineering defections, particularly in smaller parties with the primary motive, in majority of cases, being to join the ruling parties or support it from outside. In most of the cases, the split-away groups merged *en mass* with another party. Thus, merger in these cases in effect took place on the strength of merely one-third of the members of the legislative party. In Uttar Pradesh alone, in majority of cases, the split-away groups that were recognized on account of splits in their original parties either joined the ruling party or supported it from outside.

A region-wise overall analysis of cases indicates that the State of Uttar Pradesh, and the states of the Northeast have been the worst witness to defections. On the other hand, the incidence of cases has been very low in the Southern and Western/ Northwestern States, excepting the State of Punjab and Goa. This may perhaps be attributed to the presence of strong regional parties (e.g. in Tamil Nadu, Andhra Pradesh, Orissa, etc.), comparatively stable coalitions (Kerala) and better performance by one of the national parties, *i.e.* Congress (Andhra Pradesh, Karnataka and Maharashtra, etc.). Conversely, the primary reason behind greater number of cases of defections in the state of Uttar Pradesh may be attributed to a situation where the hitherto dominant socio-economic groups are being compelled to give political space to the fast emerging new groups.

As regards the case summaries of the State Legislatures, the concerned Legislature Secretariats were requested to supply the information as per format supplied to them. On the basis of information so received, summaries of cases have been included in the book.

A. CASE SUMMARIES

A. Case Summaries

The cases under the Tenth Schedule to the Constitution broadly fall under three categories, namely petitions seeking disqualification of members, claims of splits and mergers. Para 8 of the Tenth Schedule to the Constitution contains provisions regarding decisions on petitions. As per the provisions of this para, the Speaker shall by order in writing (a) dismiss the petition, or (b) declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule. If the House is in Session, the Speaker makes an observation to this effect in the House. As per the provisions of this para, every decision of the Presiding Officer on a petition for disqualification is also required to be published in the Bulletin of the House and notified in the official Gazette. As regards the claims for split and merger, there is no such requirement either in the Tenth Schedule or Rules made thereunder. Nevertheless, on a receipt of claim for split or merger, the same are submitted to the Speaker and action in accordance with the provisions in the Tenth Schedule is taken. Based on the decisions given by the respective Speakers on the petitions for disqualification under the Tenth Schedule and action taken on the claims of splits and mergers, summaries of all these cases in Lok Sabha, Rajya Sabha and State Legislatures have been prepared. For the present study, the summaries of cases of Lok Sabha have been arranged Lok Sabha wise and in case of Rajya Sabha, they have been arranged year-wise. In relation to the State Legislatures, summaries have been arranged year wise.

LOK SABHA

Akali Dal Split Case (8LS, 1986)

Initially Akali Dal had a strength of 7 members in Lok Sabha - On expulsion of 2 members, strength of Akali Dal was reduced to 5 - Thereafter of the 5 members, 3 members claimed split in Akali Dal - Claim for split found valid in terms of provisions of para 3 of Tenth Schedule - Consequently two separate legislature parties *viz.* Akali Dal (Badal) and Akali Dal (Barnala) came into being in Lok Sabha.

Facts of the case

The Akali Dal Legislature originally consisted of seven members.

On 3 November 1986 a letter dated 2 November 1986 was received from Shri Surjit Singh Barnala, President of the Akali Dal, alongwith copies of the letters written by him to Bhai Shaminder Singh and Shri Mewa Singh Gill, MPs, expelling them from the primary membership of the party for six years. After receipt of the comments and examining the matter, Bhai Shaminder Singh and Shri Mewa Singh Gill were treated as unattached members. Accordingly, the strength of the Akali Dal in the Lok Sabha was reduced from seven to five. Subsequently three out of the five members of the Akali Dal in the House, *Sarvashri* Charanjit Singh Atwal, Charanjit Singh Walia and Tarlochan Singh Tur, claimed split in the Party.

Decision of the Speaker

The matter was examined and the split in the Akali Dal was recognized by the Speaker, Dr. Bal Ram Jakhar because three out of the five members had claimed a split in the party and the provisions of paragraph 3 to the Tenth Schedule had been satisfied.

As a consequence of the split, two new legislature groups of Akali Dal were recognized *viz* the Akali Dal (Badal) consisting of three members and the Akali Dal (Barnala) consisting of two members.

Sudarsan Das and Sahebrao Patil Dongaonkar Case (8LS, 1987)

Congress (S) had a strength of 4 members in Lok Sabha - Petition for disqualification filed against 2 members of Congress (S) Party consequent upon their admission to Indian National Congress - Respondents contended that petitioner and another member of Congress (S) were expelled from Party which fact was intimated to Speaker, Lok Sabha - Consequently strength of Congress (S) was reduced to 2 comprising of 2 respondents - Congress (S) subsequently merged with INC - Minister of Parliamentary Affairs confirmed merger - merger valid in terms of para 4 of Tenth Schedule - Petition dismissed.

Facts of the case

On 6 April, 1987, Shri K.P. Unnikrishnan, MP, gave two separate petitions against *Sarvashri* Sudarsan Das and Sahebrao Patil Dongaonkar, praying for their disqualification from the membership of the House in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution. The gravamen of the charges made by the petitioner in his petitions was that the respondents, who were elected to Lok Sabha on the ticket/symbol of Congress (S) Party, had incurred disqualification for being members of the House in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution consequent upon their admission to the Congress (I) Party. The petitioner had contended that originally there were four members of Congress (S) Legislature Party in Lok Sabha *viz. Sarvashri* K.P. Unnikrishnan, V. Kishore Chandra S. Deo, Sudarsan Das and Sahebrao Patil Dongaonkar. Out of these four members, two *i.e.*, the respondents sought admission and were admitted to the Congress (I) Party. According to the petitioner, this amounted to voluntarily giving up by these members, their membership of Congress (S) to which they originally belonged. The petitioner also contended that the admission of the respondents to the Congress (I) Party was not protected by paragraph 4(1) of the Tenth Schedule to the Constitution.

Copies of the petitions were forwarded to the respondents and the leader of the Congress (I) Legislature Party for furnishing their comments.

The respondents in their identical replies stated that the Congress (S) was a national party under the Presidentship of Shri Sharad Pawar. The petitioner and another member of Congress (S) Legislature Party, Shri V. Kishore Chandra S. Deo were expelled from the primary membership of the Party by the Congress (S) Working Committee at its meeting held on 29 November, 1986. (This fact was duly intimated to the Speaker, Lok Sabha and the said two members were thereafter treated as 'unattached' in Lok Sabha). The Congress (S) Party later merged with Congress (I) Party at the Congress (S) Plenary Session held at Aurangabad on 9 December, 1986. Thus, according to the respondents, consequent upon the expulsion of Sarvashri K.P.Unnikrishnan and V. Kishore Chandra S. Deo from the primary membership of the Congress (S) Party, the strength of the Congress (S) Party with Congress (I) was only two and not four as contended by the petitioner. The respondents, therefore, claimed that their admission to the Congress (I) party was valid and within the provisions of paragraph 4 of the Tenth Schedule to the Constitution.

The Minister of Parliamentary Affairs, Shri H.K.L. Bhagat who replied on behalf of the Leader of the Congress (I) Party, reiterated the submissions of the respondents. The Minister further stated that as the Congress (S) Legislature Party consisted of only two members (*viz.*, the respondents) at the time of merger of Congress (S) Party with Congress (I) Party, their admission to the Congress (I) Party was 'perfectly valid', 'legally sound' and in accordance with the provisions of paragraph 4(2) of the Tenth Schedule to the Constitution.

On 6 May, 1987, the petitioner addressed a letter to the Speaker, Dr. Bal Ram Jakhar, raising certain legal and constitutional points questioning the Speaker's authority to declare members elected on a party ticket/symbol as unattached. On the petitioner's request, the Speaker referred the matter to the Attorney-General for his opinion.

In his opinion dated 20 July, 1987, the Attorney-General, Shri K. Parasaran, stated that the action taken by the Speaker was "correct and in accordance with law". The relevant extracts from the Attorney-General's opinion are given below:

(i) Re. correctness of the decision of the Speaker to treat Shri K.P. Unnikrishnan as unattached consequent upon his expulsion from Congress (S) Party.

"I am of the view that the action taken by the Hon'ble Speaker is correct and in accordance with law.There is a merger of Congress (S)

Party into Congress (I). The said merger satisfies the requirements of section 4 of the Constitution (52nd Amendment) Act, 1985. The two hon'ble members of Parliament, Shri K.P. Unnikrishnan and Shri Kishore Chandra Deo, do not fall within the group of 2/3 members of the legislature party who have merged with Congress (I). Those who are merged cannot say that they belonged to Congress (S), because they have merged with Congress (I). The remaining members who are in the minority cannot certainly say that they belong to Congress (S) Party. If the requirements of Directions 120 and 121 are satisfied, the Speaker may recognise them as a Group or association in accordance with Directions 121 and 122. However, these requirements are not satisfied in the present case".

(ii) Re. the contention that the Speaker has no discretionary power to declare any member elected on a particular symbol of a Party either as not belonging to that party or unattached.

"I do not think the contentions are sustainable. Under section 6 of the Constitution (52nd Amendment) Act, if any question arises as to whether a member of the House has become subject to disqualification under the Schedule, the question shall be referred for the decision of the Speaker of the House and his decision shall be final. If a person falls under section 4(1)(a) or 4(1)(b), he cannot be disqualified. Therefore, to decide as to whether he falls under one or the other of the provisions, the Speaker has jurisdiction to decide as to whether because of the merger there is any defection attracting the disqualification of members. He has, therefore, to determine as to whether it falls under section 4(1)(b) or section 6. Once he has been so identified, necessarily Directions 120 and 121 operate. The Constitution 52nd Amendment does not confer on the Election Commission the power to decide this question as sought to be contended by the Hon'ble Member".

Decision of the Speaker

After taking into account all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule to the Constitution, the Speaker, Dr. Bal Ram Jakhar held that the admission of the respondents to the Congress (I) party was valid and legal and they have not incurred any disqualification for being members of Lok Sabha and pronounced the following order on 9 September, 1987:

"In exercise of powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India, I, B.R. Jakhar, Speaker, Lok Sabha, hereby decide that the petitions dated 6 April, 1987 given by Shri K.P. Unnikrishnan against *Sarvashri* Sudarsan Das and Sahebrao Patil Dongaonkar have no merit and *Sarvashri* Sudarsan Das and Sahebrao Patil Dongaonkar have not incurred any disqualification in terms of paragraph 2(1) (a) of the Tenth Schedule to the Constitution. I accordingly dismiss the petitions."

Consequential Action

The decision of the Speaker was published in the Bulletin Part II dated 10 September, 1987 and notified in the Gazette of India Extraordinary Part II dated 11 September, 1987. Copies of the decision were forwarded to the petitioner, the Secretary, Election Commission and the Ministry of Parliamentary Affairs.

Lalduhoma Case (8LS, 1987-88)

Petition under Tenth Schedule filed against member of INC for having voluntarily given up his membership of party and forming a new party - Petitioner also alleged that respondent contested elections to Mizoram Legislative Assembly as independent candidate- After considering comments of respondent Speaker referred matter to Committee of Privileges for preliminary enquiry and report - After submission of Report by Committee, respondent given opportunity to represent his case to Speaker in person - Speaker in his decision held that respondent had incurred disqualification in terms of provisions of para 2(1)(a) of Tenth Schedule - Petition allowed - Respondent disqualified from membership of Lok Sabha.

Facts of the case

On 21 July, 1987, Shri Ram Pyare Panika, MP gave a petition under the Tenth Schedule to the Constitution against Shri Lalduhoma, MP praying that he be declared to have incurred disqualification for being a member of Lok Sabha under para 2(1)(a) of the Tenth Schedule to the Constitution for having resigned from the Congress(I) Party in March, 1986 and forming a new party. The copies of the petition together with its annexures were forwarded to the respondent, Shri Lalduhoma and to the Leader of the Congress(I) Legislature Party in terms of Rule 7(3) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 (hereinafter referred to as Anti-Defection Rules) for furnishing their comments in the matter.

The respondent through his letter dated 30 July, 1987 furnished his comments in the matter. The main points made by him in his comments were - (a) he had resigned only from the Presidentship and not the membership of the party; (b) the Anti-Defection Rules were not applicable in his case as he was expelled on 17 March, 1986, whereas the Rules came into force *w.e.f.* 18 March, 1986; and (c) he had been expelled from the party in Mizoram but outside Mizoram he was still a member of the party.

On perusal of the respondent's comments it was noticed that he had not replied

to the most important point in the petition against him *i.e.* he (Shri Lalduhoma) had "contested the general election to the Mizoram Legislative Assembly... as an independent candidate with symbol "Elephant." Further it was also seen that the respondent in his comments had submitted that the circumstances compelled him and his colleagus to form the party called Mizoram PCC(I) for Peace which later on amalgamated with the Mizo Union Party. He, however, did not explain as to how he could be a member of the Mizo Union Party as well as of the Mizoram Pradesh Congress Committee (I) at the same time.

Therefore, the respondent was requested to clarify - (i) whether he had contested the General Elections to the Mizoram Legislature Assembly in February, 1987 as an independent candidate with symbol 'Elephant', as alleged by the petitioner; and (ii) whether it was permissible under the Constitution of the Indian National Congress for a member of the party to form or join another party and still remain in the party.

The respondent in his letter dated 10 August, 1987 accepted that he had contested the election to the Assembly. As regards the other point, he stated that the Mizoram Pradesh Congress Committee had functional autonomy and had its own Constitution since 12 October, 1978. He contended that his expulsion "could not have effect outside the jurisdiction of the PCC Constitution" and hence he remained in the party outside Mizoram.

The Minister of Parliamentary Affairs, Shri H.K.L. Bhagat who was authorized under rule 3(1)(a) of the Anti-Defection Rules for communicating with the Speaker with respect to matters under the Anti-Defection Law, in his reply dated 21 August, 1987,corroborated the contention of the petitioner that the respondent had resigned from the Congress(I) Party in March, 1986, and formed a new party. He also corroborated the contention that the respondent had contested the general elections to the Mizoram Legislative Assembly as an independent candidate.

Processing of the petition and deliberations thereon by the Committee of Privileges.

The Speaker, Dr. Bal Ram Jakhar referred the matter to the Committee of Privileges on 16 November, 1987 under rule 7(4) of the Anti-Defection Rules for making a preliminary enquiry and submitting a Report to him.* The Speaker also informed the House about it the same day.

The issue in the case was - whether Shri Lalduhoma, a member of the

* This provision has been made in the Rules to enable the Speaker to come to a finding/conclusion in the matter. The Report of the Committee of Privileges is, therefore, presented to the Speaker in confidence and not made public.

Congress(I) Legislature Party, by contesting the elections to the Mizoram Legislative Assembly in 1987, as an independent candidate set up by the Mizo National Union Party, could be said to have voluntarily given up the membership of the original political party viz., Congress(I) and come within the rigours of para 2(1)(a) of the Tenth Schedule.

It is pertinent to mention that as regards evidence before the Committee of Privileges, the record of evidence of one party or his witness is usually neither supplied nor shown to the other party. However, in the instant case, there was a procedural deviation in this respect. The Committee, keeping in view the fact that it was considering a petition for disqualification of a member, which had far-reaching ramifications, allowed the evidence tendered by the petitioner and his witnesses before the Committee to be supplied to the respondent. The Committee, also allowed evidence of the respondent and copies of the documents furnished by him, to be supplied to the petitioner.

At their twelfth sitting held on 10 August, 1988, the Committee deliberated upon the matter and arrived at their conclusions. At their thirteenth sitting held on 16 September, 1988, the Committee considered and adopted their draft Report. *Sarvashri* V.S. Krishna Iyer, K. Ramachandra Reddy and Somnath Chatterjee, MPs, submitted notes of dissent which were appended to the Report. The Committee submitted their report to the Speaker on 14 October, 1988.

The matter as to whether it is incumbent upon the Speaker to afford a reasonable opportunity to a respondent to represent his case and to be heard in person even though such an opportunity of being heard in person, had already been provided to him by the Committee of Privileges during their inquiry, was examined in detail. On a legalistic interpretation based on strict construction of the provisions of the relevant rules, it was decided that even where the Committee after giving reasonable opportunity, submitted their Report to the Speaker, the Speaker is required to allow further opportunity to the member (respondent) to represent his case. Accordingly, on 15 November, 1988, Shri Lalduhoma was heard in person by the Speaker in this regard.

Decision by the Speaker under the Tenth Schedule

After taking into account all the facts and circumstances of the case, the Report of the Committee of Privileges, the submissions made by Shri Lalduhoma and in accordance with the provisions of the Tenth Schedule to the Constitution, the Speaker, Dr. Bal Ram Jakhar pronounced the following order on 24 November,

1988:-

> ".....Shri Lalduhoma, an elected member of Lok Sabha, from Mizoram constituency, has incurred disqualification in terms of paragraph 2(1)(a) of the said (Tenth) Schedule for being a member of Lok Sabha by voluntarily giving up his membership of Congress(I) - his original political party. Accordingly, Shri Lalduhoma has ceased to be a member of Lok Sabha with immediate effect."

Consequential Action

The decision of the Speaker was published in Bulletin Part II and the Gazette of India Extraordinary Part II, dated 24 November, 1988. Copies of the order of the Speaker were forwarded to the petitioner, respondent, the leader of the legislature party concerned, P.S. to Prime Minister and Secretary, Election Commission of India.

AIADMK Split Case (8LS, 1988-89)

Snbsequent to demise of Shri M.G. Ramachandran, Chief Minister, Tamil Nadu & President AIADMK in 1987 there arose leadership crises in party - President's rule was imposed in Tamil Nadu - Originally AIADMK had strength of 12 members in Lok Sabha - With expulsion of one member from party, strength of AIADMK was reduced to 11 - Claims and counter claims re. Leadership in party were made - On opinion being sought, AG opined that in disputes on leadership voice of majority of members would have to be accepted - Since Dr. S. Jagathrakshakan had with him the majority of 6 of the 11 members of AIADMK in Lok Sabha he was recognized as leader of AIADMK in Lok Sabha - Subsequently Shri P. Kolandaivelu, erstwhile leader, claimed split in AIADMK - He claimed support of 5 members (including one expelled member) - Claim for split found valid in terms of provisions of para 3 of Tenth Schedule even after excluding expellee - Consequently two separate groups viz AIADMK - I Group and AIADMK II came into being in Lok Sabha - Thereafter intimation received re. merger of two groups - Matter re. merger remained inconclusive due to dissolution of Lok Sabha.

Facts of the case

In December 1987, Shri M.G. Ramachandran, the then Chief Minister of Tamil Nadu passed away. This led to political uncertainity in the State which culminated in the imposition of the President's Rule in Tamil Nadu.

The AIADMK had originally a strength of 12 members in the Lok Sabha. In 1986 Shri P. Kannan had been expelled from the membership of AIADMK. Consequently, Shri Kannan was treated as an 'unattached member' in House w.e.f. 5 May 1986. The effective strength of the party in the House was accordingly reduced to 11.

Shri S. Raghavanandam, General Secretary In-charge of the AIADMK Party, in the letter dated 19 February, 1988, addressed to the Speaker, Lok Sabha, intimated that at a meeting of the AIADMK Party held on 18 February, 1988 at Madras, the

members of the Lok Sabha belonging to the party had passed a resolution unanimously to elect Dr. S. Jagathrakshakan as the Leader, Shri K. R. Natarajan as the Deputy Leader and Shri S. Thangaraju as the Whip of the AIADMK Party. It had also been decided at the meeting to relieve Sarvashri P. Kolandaivelu and M. Mahalingam from their responsibilities as the Leader and the Whip of the party in the Lok Sabha. The letter had been signed by Dr. S. Jagathrakshakan, and Sarvashri K.R. Natarajan, S. Thangaraju, A.C. Shanmugam, P. Selvendran and N. Soundararajan.

In a related development Shri P. Kolandaivelu,MP in his letter dated 25 February, 1988, addressed to the Speaker, Lok Sabha, stated that Dr. S. Jagathrakshakan, and *Sarvashri* A.C. Shanmugam, P. Selvendran and K. R. Natarajan had disobeyed the whip issued to them on 23 February, 1988 directing them to vote in support of the proclamation regarding the President's Rule in Tamil Nadu and that by disobeying the whip and by walking out they had incurred disqualification under the provisions of the Tenth Schedule to the Constitution.

On perusal of the two communications it was seen that while it was clear that there were two factions in the AIADMK in the Lok Sabha on account of the split in the political party, neither faction had stated the same specifically. Therefore, all the members of the House were requested to state specifically in writing whether (i) two factions had arisen in the AIADMK Legislature Party in the Lok Sabha on account of the split in the party in Tamil Nadu; and (ii) if so, to which faction each of them belonged.

As regards the request by Shri P. Kolandaivelu for disqualifying the members, it was seen that the same was in the form of a letter and not a petition; it was not accompanied by copies of documentary evidence and not signed and verified as per provisions of the Anti-Defection Rules. Though he was apprised of the relevant provisions of the Rules in this regard, he did not file a petition for disqualification against the said members.

Later Shri P. Kolandaivelu *vide* his letter dated 7 March 1988 stated that he had been nominated as the Leader of the AIADMK Parliamentary Party by the late Shri M.G. Ramachandran. After the demise of Shri M.G. Ramachandran, there was a split in the AIADMK Party.

On 9 March 1988, Shri S. Thanagaraju,MP presented himself before the Speaker Dr. Bal Ram Jhakhar alongwith five other members of his party, *viz.*, Dr. S. Jagatharakshakan, *Sarvashri* K.R. Natarajan, A.C. Shanmugam,

P. Selvendran and N. Soundararajan and handed over a letter dated 9 March 1988 signed by all the said six members. In the letter it was intimated that a meeting of the parliamentary party of AIADMK was held on 18 February, 1988 which was attended by said six members of Lok Sabha and six other members of the party in the Rajya Sabha. It was unanimously resolved at the meeting to relieve Dr. P. Kolandaivelu and Shri M Mahalingam,MPs from the party posts. The meeting also elected Dr. S. Jagathrakshakan as the Leader, Shri K.R. Natarajan as the Deputy Leader and Shri S. Thangaraju as the whip of the AIADMK party in the Lok Sabha.

The member had thus confirmed the contents of the earlier communication received from the General Secretary incharge of the AIADMK party to the same effect. The members had also requested the Speaker to recognise the new office bearers with immediate effect and reallocate seats to them accordingly.

Shri P. Kolandaivelu in his letter dated 14 March, 1988, stated that the meeting of the AIADMK Party held on 18 February, 1988, at which new office bearers were said to have been elected, was not held with his consent. Shri S. Raghavanandam, had no *locus standi* to conduct the Parliamentary Party meeting or to elect new office bearer. Action was being initiated against Dr. Jagathrakshakan, Sarvashri K.R. Natarajan, A.C. Shanmugam and P. Selvendran for disobeying the party whip.

Shri Kolandaivelu further stated that a meeting of the AIADMK Parliamentary Party was held on 22 February, 1988 which was attended by six members of the Lok Sabha and four members of the Rajya Sabha belonging to the party. A copy of the attendance sheet of the meeting was enclosed with the letter. The six members of the Lok Sabha who were said to have attended the meeting and whose signatures were appended to the attendance sheet included *Sarvashri* P. Kannan, Janarthanam, M. Mahalingam and R. Anna Nambi.

While claims and counter claims regarding leadership of the AIADMK were being made, certain other legal points regarding the Anti-Defection law were raised in some other cases. Opinion on all these points was sought from the Attorney-General for India. In the reference, opinion of the Attorney-General was also sought on the point of dispute regarding the leadership of a legislature party/group. As regards this issue the Attorney-General *vide* his opinion dated 12 January 1988 took a view that "In a democracy it is the rule of the majority.....the person elected as leader by that group which constitutes the majority of the total number of members of the concerned legislature party should be the one who should be recognised as

the leader of the legislature party.....In case of dispute regarding leadership, it is the voice of the group which has the majority of the concerned legislature party that will have to be accepted."

Since Dr. S. Jagatharakshakan had with him the majority of six of the eleven members of the AIADMK party, the Speaker, on 16 March 1988, recognised Dr. Jagathrakshakan as the leader of AIADMK in the Lok Sabha.

On 17 March 1988 a letter dated 16 March, 1988 was received from Shri P. Kolandaivelu wherein he claimed a split in the AIADMK Legislature Party in the Lok Sabha.

He stated that he was the leader of the faction that arose due to the split and it comprised of five other members *viz. Sarvashri* M. Mahalingam, M.R. Janarthanam, R. Anna Nambi, M. Thambi Durai (Deputy Speaker, 8 LS), S. Thangaraju and P. Kannan (who was earlier expelled from the AIADMK).

Shri Kolandaivelu was requested to furnish written affirmation from the other members to the effect that they belonged to the faction led by him.

Thereafter *Sarvashri* P. Kolandaivelu, M.R. Janarthanam, M. Mahalingam and R. Anna Nambi affirmed in writing that they belonged to the AIADMK (Jayalalitha) group which had come into being as a result of the split in AIADMK and requested that the same may be recognised as a separate group in the House.

Decision in the case

After taking into account the material on record, the following facts were taken note of:

(i) Originally, the AIADMK Legislature Party had a strength of 12 members

(ii) After the expulsion of Shri P. Kannan from the Party and on his being declared as an unattached member, the strength of the AIADMK in the Lok Sabha was reduced to eleven

(iii) Out of the eleven members, four claimed split in the Party. The strength of the faction claiming the split was more than one-third of the strength of AIADMK

(iv) Hence there had been a valid split in the AIADMK in the Lok Sabha in terms of the provisions of para 3 of the Tenth Schedule.

Consequently, in April 1988, two separate groups of the AIADMK Legislature Party were recognised *viz.* AIADMK-I Group (consisting of seven members

with Dr. S. Jagatharakshakan as its leader) and AIADMK-II Group (consisting of four members with Shri P. Kolandaivelu as its leader)

Necessary changes were made in the party position in the Lok Sabha and the Leaders of the two factions of AIADMK were informed accordingly.

Subsequent developments

Kùm. J. Jayalalitha, General Secretary, AIADMK, in her letter dated 23 February, 1989, addressed to the Speaker, Dr. Bal Ram Jakhar, stated that in the "General Council Meeting of AIADMK Group [by Smt. Janki Ramachandran] held on 10 February, 1989 at Madras, it was unanimously resolved to unite their group with AIADMK and the election symbol *viz.* "two leaves" were withdrawn with the permission of the Chief Election Commissioner.

Kum. J. Jayalalitha also requested the Speaker that "the earlier order passed by the Lok Sabha Secretariat describing the two groups as AIADMK-I and AIADMK-II has automatically ceased to have any effect and accordingly the Hon'ble Speaker may be pleased to direct the Lok Sabha Secretariat to effect all the corresponding changes about the strength as well as description of the AIADMK party members and thereby give effect to the orders passed by the Chief Election Commissioner of India dated 11 February, 1989" It was also stated that "Shri P. Kolandaivelu, will be the leader of the AIADMK Parliamentary Party".

A letter dated 24 February 1989 from Shri P. Kolandaivelu, Leader, AIADMK II Group, was also received to this effect.

However, Dr. S. Jagatharakshakan, Leader AIADMK-I Group, *vide* his letter dated 8 March, 1989 furnishing his comments in this matter *inter alia* stated that members of AIADMK-I Group had unanimously decided on 20 February 1989 to continue to remain as such in the Lok Sabha and not to accept the merger.

The matter regarding the merger of the two groups of the AIADMK in the House remained inconclusive due to dissolution of the Eighth Lok Sabha.

Janata Party Merger Case (8LS, 1989)

Intimation received from Leader of Janata Party regarding decision taken by Janata Party and Lok Dal to merge and formation of 'Janata Dal' - Request made to Speaker for recognition of Janata Dal in Lok Sabha - One member of Janata Party decided not to join Janata Dal and continue as member of Janata Party - Claim for merger found valid in terms of provisions of para 4 of Tenth Schedule - Speaker made announcement to this effect in the House - Janata Dal came into being in Lok Sabha.

Facts of the case

Prof. Madhu Dandavate, MP in his letter dated 10 March 1989, addressed to the Speaker, Dr. Balram Jakhar stated that on 21 February 1989, at a joint meeting of members of Parliament belonging to the Janata Party in Parliament and the Lok Dal Parliamentary Party, held under his Chairmanship, a decision was taken to form a new legislature party called 'Janata Dal' by merging the two legislature parties. He also stated that earlier the same day, two separate meetings had been held by the members of the two Parliamentary Parties and all of them had agreed to the said merger; the sole exception being Shri Syed Shahabuddin, MP belonging to Janata Party who decided not to join the Janata Dal.

Prof. Dandavate requested the Speaker to recognise the newly formed Janata Dal in the Lok Sabha.

In the first instance, on 13 March 1989, a copy of Prof. Dandavate's letter was forwarded to Shri Mohd. Mahfooz Ali Khan, MP and Leader of the Lok Dal Legislature Group in the Lok Sabha requesting him to confirm whether the members belonging to the group in the Lok Sabha had agreed to a merger with the Janata Party Legislature Group in the Lok Sabha, and if so, to furnish: (i) a copy of the resolution passed by the Lok Dal Party in Parliament deciding to merge with the Janata Party in Parliament, duly authenticated by the Leader of Lok Dal Legislature Party in Lok Sabha; and (ii) declarations from members belonging to the Lok Dal Legislature Party in the Lok Sabha supporting the said merger.

On the same day a letter was sent to Prof. Dandavate to furnish (i) a copy of the resolution passed by the Janata Party in Parliament deciding to merge with the Lok Dal Parliamentary Party duly authenticated by the Leader of the Legislature Party in the Lok Sabha; (ii) a copy of the resolution passed at the joint meeting of members of the two Parliamentary Parties, duly authenticated by the Leaders of both the legislature parties; (iii) declarations from members belonging to Janata Dal Legislature Party in the Lok Sabha supporting the said merger; and the (iv) copies of rules, regulations and requisite forms under the Anti-defection Rules.

Shri Mohd. Mahfooz Ali Khan *vide* his letter dated 14 March 1989 confirmed the contents of Prof. Dandavate's letter and stated that a meeting of members belonging to the Lok Dal Parliamentary Party had taken place on 21 February 1989 and it was decided at the meeting "to merge the Lok Dal Parliamentary Party with the Janata Party in Parliamentary." He also enclosed alongwith his letter a copy of the resolution deciding to merge, duly authenticated by him.

As mentioned above, Shri Khan was also requested to furnish declarations from the members of the Group supporting the said merger. He instead forwarded statement of particulars and declaration Form III (as required under Rule 4 of the Anti-defection Rules) in respect of the Lok Dal members belonging to the Lok Sabha.

Prof. Dandavate and Shri Khan in a jointly signed undated letter reiterated that the two political parties, *viz.* the Janata Party and the Lok Dal had merged together to form a new political party called the Janata Dal. They further stated that as a consequence of this merger, the Janata Party in Parliament and the Lok Dal Parliamentary Party had also decided to merge.

The following material was furnished alongwith this letter:-

(i) Copy of the resolution passed by the Janata Party in Parliament regarding the formation of the Janata Dal.

(ii) Copy of the resolution passed by the Lok Dal Parliamentary Party regarding the formation of the Janata Dal.

(iii) Copy of the resolution passed at the joint meeting of the Janata and Lok Dal Legislature Parties deciding to merge and to form the Janata Dal in Parliament.

(iv) Copy of the resolution passed by the Janata Dal in Parliament on 28 March 1989 electing its office bearers for both the Houses of Parliament and also electing Prof. Madhu Dandavate, MP as the Leader of the

Janata Dal Legislature Party in the Lok Sabha.

(v) Copy of the constitution of Janata Dal.

(vi) Copy of the rules framed under the constitution of Janata Dal.

(vii) Copy of the constitution of Janata Dal in Parliament.

(viii) Copy of a publication issued by the Janata Dal containing its policies and programme.

(ix) List of Members of Lok Sabha belonging to the Janata Legislature Group and Forms I and III in respect thereof.

(x) List of Members of Lok Sabha belonging to the Lok Dal Legislature Group and Forms I and III in respect thereof.

It was mentioned in a 'note' given at the end of the letter that "correspondence in this connection may be had with Shri Madhu Dandavate." (this expression was construed to have taken care of the requirement of Rule 3(a) of the Anti-Defection Rules which lays down that the Leader of each legislature party shall furnish to the Speaker, *inter-alia* "....the names and designations of the members of such party who have been authorised by it for communicating with the Speaker for the purposes of these rules.")

Finally, Prof. Madhu Dandavate and Shri Mohd. Mahfooz Ali Khan requested the Speaker to recognise the Janata Dal Legislature Party in the Lok Sabha and also to recognise Prof. Madhu Dandavate as its Leader.

Decision of the Speaker

All the documents were examined in the light of the provisions in the Tenth Schedule to the Constitution and the Rules made thereunder.

On 11 April 1989, the Speaker, Dr. Bal Ram Jakhar made an announcement in the House regarding formation of the Janata Dal Legislature Party in the Lok Sabha. He *inter-alia* said:

> "...I have since received the necessary information/confirmation from Prof. Madhu Dandavate as well as Shri Mohd. Mahfooz Ali Khan and am satisfied that the conditions of merger stipulated in the Tenth Schedule to the Constitution have been fully met. I, therefore, accord recognition to the Janata Dal as a Legislature Party in the Lok Sabha for the purposes of the Tenth Schedule and Rules thereunder."

Consequential Action

On 11 April 1989, a letter was sent to Prof. Madhu Dandavate enclosing a copy of the announcement made by the Speaker that day according recognition to the Janata Dal in the Lok Sabha. This information was also published in Bulletin-Part-I on the same day. A circular regarding the latest party position was also issued. Besides, the summary of the information furnished by the members of the Janata Dal Legislature Party was published in Bulletin Part-I dated 13 April 1989.

Janata Dal (S) Case (9LS, 1990-91)

Intimation received re. expulsion of 25 members from JD-members declared unattached – Claim for split in JD by 58 members which included 25 expellees – 2 petitions filed against 30 members praying for disqualification for having violated party whip while voting on Confidence motion – 7 petitions filed against 7 members praying for their disqualification on same ground – Petition filed against another member praying for disqualification for having voluntarily given up membership –All matters considered together for a decision under Tenth Schedule – Speaker held : 54 members of JD constituted one third of strength of JD as a result of split - These members treated as members of JD(S) – 7 members disqualified on ground of violation of party whip – One member disqualified for voluntarily giving up membership - Review Petitions filed – Rejected on merits – Speaker's decision challenged in Court of Law – Ninth Lok Sabha dissolved before any judgement could be given by court.

Facts of the case

Janata Dal had a strength of 141 members at the time of constitution of Ninth Lok Sabha

On 5 November, 1990, Speaker, Shri Rabi Ray received a letter from Shri Vishwanath Pratap Singh, Leader of the Janata Dal in Parliament intimating that 25 members of Lok Sabha, belonging to the Janata Dal had been expelled from the primary membership of the party. On receipt of the information, in conformity with past parliamentary precedents and practice, etc., the Speaker declared the said 25 members as 'unattached'. These members were informed of the decision on the same day.

A letter jointly signed by *Sarvashri* Chandra Shekhar, Devi Lal, Chand Ram and Hukum Deo Narain Yadav, MPs and a member of Rajya Sabha, was received on 6 November 1990 by the Speaker informing that the Janata Dal had split at all levels in every State and that following the split, 58 members of Lok Sabha along with some members of Rajya Sabha, had constituted a group representing a faction of Janata Dal and had adopted the name Janata Dal (S). On the same day at

17.00 hrs, the Speaker received a letter from Shri Vishwanath Pratap Singh claiming that 25 members of the Janata Dal having already been expelled, the residual strength of the claimed splinter group came to only 33, which was less than one-third of the residual strength of the Janata Dal in Lok Sabha and, therefore, the splinter group should not be recognized. Letters were also received from 25 members of the Janata Dal who had been treated 'unattached' intimating that there had been split in the Janata Dal and they belonged to the Janata Dal (S). In view of the claims and counter-claims made by both the parties, communications received from Shri Chandra Shekhar and Shri Vishwanath Pratap Singh about split were sent to each other for enabling them to furnish additional comments, if any.

A letter dated 6 November 1990 was received from Shri Chandra Shekhar on 7 November 1990 wherein he had reiterated that a split took place in the Janata Dal on 5 November 1990 at 10.30 hrs. It was also stated that the faction which had arisen as a consequence of split had been named as Janata Dal (S). Shri Chandra Shekhar made a request to rescind the order of treating as 'unattached' those 25 members who had been expelled from the Janata Dal and to recognize Janata Dal (S).

On 7 and 8 November 1990, two petitions were filed by Shri Santosh Bhartiya and Shri Satya Pal Malik, under the Tenth Schedule to the Constitution against 30 members of the Janata Dal (Smt. Usha Sinha and 29 other members) praying for their disqualification in terms of para 2(1)(b) of the Tenth Schedule, for violation of party whip at the time of voting on Confidence Motion on 7 November, 1990. On 23 November 1990, seven petitions were filed by Shri Sukhdeo Paswan, MP under the Tenth Schedule to the Constitution against seven other members of the Janata Dal viz. Shri V.C. Shukla, Dr. Bengali Singh, *Sarvashri* Sarvar Hussain, Bhagey Gobardhan, Manvendra Singh, Hemendra Singh Banera and D. Amat praying for their disqualification on identical grounds. On 14 December 1990, a petition was filed by Shri Devendra Prasad Yadav, MP praying for disqualification of Dr. Shakeelur Rehman, MP, on ground of voluntarily giving up membership of Janata Dal in terms of para 2(1)(a) of the Tenth Schedule.

Processing of petitions and deliberations thereon

In all, petitions for disqualification were filed against 38 members. The petitions against these members can be broadly classified in three categories viz. (a) Petitions against 30 members *viz.* Smt. Usha Sinha and 29 other members; (b) Petitions against seven members *viz.* Shri V.C. Shukla and six others; and (c) Petition against Dr. Shakeelur Rehman.

Subsequently, one of the respondents in the group of 30 members, Shri Gurdial Singh Saini, resigned from the membership of Lok Sabha.

Hence in net effect there were 10 petitions against 37 members.

All these matters were considered together for a decision under the Tenth Schedule to the Constitution. At the outset, after ascertaining that all the petitions of disqualification were in order, copies thereof were forwarded to the respondents for comments.

After considering the comments of the respondents, the Speaker also gave a personal hearing to them and their Counsels on 7 January 1991 at their request.

The issues framed by the Speaker in the case were as follows :-

(i) Whether a split took place in the original Janata Dal in terms of paragraph 3 of the Tenth Schedule.

(ii) Whether the expulsion of 25 members by Shri Vishwanath Pratap Singh on 5 November 1990 and their being treated as unattached by the Speaker has any legal effect on the plea of split.

(iii) Whether any of the respondents had incurred by disqualification under the Tenth Schedule of the Constitution.

The matters arising out of the case were, thereafter, examined on merit and legal provisions obtaining in the Tenth Schedule to the Constitution.

Decision by the Speaker under Tenth Schedule

The Speaker (Shri Rabi Ray) pronounced his detailed decision in the matter in Lok Sabha on 11 January 1991. The main highlights of the decision are as follows:

(i) Re. Validity of claim for split in the Janata Dal

The main issue in the case was the validity of the claim for split in the Janata Dal. The Speaker while dwelling upon the question of according recognition to the breakaway faction as a consequence of a split claimed in the Janata Dal, *inter-alia* observed that "..the split has to be only one time affair and cannot be ongoing or continuous process or phenomenon."

It was held that 54 members of the Janata Dal constituted a faction which had arisen as a result of split in the original Janata Dal Party and this group which consisted of not less than one-third of members of the original party, was deemed to be a new political party in terms of paragraph 3 of the Tenth Schedule and the 54 members of this group were treated as to be members of the Janata Dal (S) which was their original party.

(ii) Petitions for disqualification

The petitions for disqualification were considered depending upon cases against the concerned respondents. In the set of petitions against 29 members *viz.* Smt. Usha Sinha and 28 others, name of one respondent Shri Basvaraj Patil did not appear in the list of 58 members which was submitted by Shri Chandra Shekhar on 6 November 1990.

Since the case against Smt. Usha Sinha and 27 other members was more or less similar, they were considered together. The case of Shri Basavraj Patil was considered separately.

In the set of seven petitions, the cases against two respondents *viz. Sarvashri* Hemendra Singh Banera and Manvendra Singh were considered separately. The cases against five other respondents *viz.* V.C. Shukla and four others were considered, together.

The case against Dr. Shakeelur Rehman was considered separately.

The gist of Speaker's decision on the above mentioned 37 petitions is as under:-

(a) Petitions against Smt. Usha Singh and 27 other members

It will be clearly seen that there is no evidence to show that the split occurred prior to expulsion, since there are claims and counter claims about timing of the split *vis-a-vis* timing of expulsion and since both the actions of expulsion and the meeting of the splinter group have been challenged, I hold that the benefit of doubt should go to the respondents, who would become disqualified in the event of my not recognizing the split to have taken place prior to expulsion .....in the event of my not recognizing the split to have taken place prior to expulsion, these 28 members will stand disqualified, and any benefit of doubt, therefore has to go in their favour. As such, the petition for disqualification against the aforementioned 28 members are dismissed.

(b) Petition against Shri Basavraj Patil

According to the records of Lok Sabha Secretariat and as admitted by both parties, Shri Patil voted against the Motion of Confidence against party whip on the 7 November....the name of Shri Patil does not appear in the list of 58 members submitted by Shri Chandra Shekhar. I cannot hold that he was part of the splinter group, which came into existence on 5 November 1990. The claim that he belonged to JD(S) on 7 November 1990 does not hold good. As he did not belong to JD(S) on

7 November 1990, he cannot claimed to have escaped directions of the Janata Dal party on that date. As he cannot be held to have joined the splinter group on 5 November 1990, his declaration under Form-III cannot be taken on face value and is clearly an after-thought. The appeal made by Shri Vishwanath Pratap Singh on 7 November on the floor of the House cannot be said to override a specific written direction by the party. In view of the above, I hold that Shri Basavraj Patil has become disqualified under paragraph 2(1)(b) of the Tenth Schedule and Rule 8(1)(b) of the Disqualification Rules.

(c) Petition against Shri Hemendra Singh Banera

It is observed that his name was included in the list of 58 members furnished by Shri Chandra Shekhar. However, Shri Banera handed over two letters on 7 November 1990, one to Lok Sabha Secretariat, and one to me personally. In both the letters, he had stated that he was abiding by the whip of the leader of the Janata Dal and was voting in favour of the Motion moved by Shri Vishwanath Pratap Singh. He also stated that other correspondence bearing his name or signature has to be treated as cancelled. As he made this claim on 7 November, it will be presumed that the signature appended to the letter of Shri Chandra Shekhar dated 5 November was withdrawn and rescinded..... " In any case, it is neither his claim nor the claim of anybody else that there was a second split. Shri Banera, therefore, cannot seek any protection under Paragraph 3...I, therefore, hold that Shri Banera has incurred disqualification under paragraph 2 of the Tenth Schedule...

(d) Petition against Shri Manavendra Singh

The case against Shri Manavendra Singh is that he voted in support of the Motion of Confidence on 7 November, 1990 in accordance with the whip of the Janata Dal, but contravened the whip on 16 November 1990. From office records I observe that Shri Manavendra Singh was absent on 7 November 1990; and, therefore, the averment made in the petition of Shri Paswan was not correct to this extent. Shri Manavendra Singh has already been recognized to belong to JD(S)... He thus came to the discipline of JD(S) with effect from 5 November 1990, and was not subject to the whip of Janata Dal thereafter. Thus being the position, I dismiss the petition against Shri Manavendra Singh.

(e) Petitions against Shri V.C. Shukla, Dr. Bengali Singh, Sarvashri Sarwar Hussain, Bhagey Gobardhan and Devananda Amat.

I observe that these five respondents are not in the list of 54 members who have been recognized to constitute JD(S). There is one factual error in the petition against Dr. Bengali Singh. While the petition states that Dr. Bengali Singh voted in the support of the Motion on 7 November 1990, in fact he was absent on that day as the record would show. However, this does not have any material effect on the cause of action, namely, that he had voted against the whip on the 16 November 1990. This abstention on 7 November 1990 which also amounts to violation of party whip does not seem to have been condoned.... The fact that four respondents had voted in accordance with the whip on 7 November further proves that the Form III furnished by the respondents is an afterthought. .... Dr. Bengali Singh had made certain claims regarding his voting on 7 November which having self-contradictions need not be gone into. In any case, these five respondents did not figure in the list submitted by Shri Chandra Shekhar on 7 November 1990 and this had not been explained by the respondents. The plea that there were hopes of reapproachment between the two factions, while could have moral ramifications have no implications as far as the proceedings under the Tenth Schedule is concerned. The five respondents, therefore, did not belong to JD (S) on 5 November 1990, the day on which the split came into being and as they do not constitute one third of residual strength of Janata Dal they are not protected under the paragraph 3. I, therefore, hold that Shri Vidya Charan Shukla, Dr. Bengali Singh, Shri Sarwar Hussain, Shri Bhagey Gobardhan and Shri Devananda Amat stand disqualified under paragraph 2 of the Tenth Schedule read with Rule 8 (1)(b) of the Disqualifications Rules, 1985.

(f) Petition against Dr. Shakeelur Rehman

"The split is recognized with effect from 5 November 1990 and split for the purpose of the Tenth Schedule is only a one-time affair, and cannot be an on-going or continuous process or phenomenon. The Form III purportedly signed on 5 November 1990 is clearly an after-thought. keeping in view the circumstances, namely, that the respondent was not in the list of members submitted by Shri Chandra Shekhar on 6 November 1990 and also on 16 November 1990, that the alleged

revised Form III was not submitted to me on or immediately after 5 November 1990, that his name does not appear in the list dated 14 November 1990 submitted by Shri Harmohan Dhawan. The pleas that on 7 November, 1990 and 16 November 1990 he belonged to JD(S) and therefore subject to Whip of JD(S) and not that of JD is clearly an afterthought for the same reason. It has been stated during personal hearing that once a member makes a claim about his party status, the 'claim' should be accepted, that this should be the end of the matter. Even conceding for the sake of argument that a claim validly made could be accepted at face value, it is observed that the claim made here is not validly made inasmuch as (i) claim has not been made before the Speaker as required under the Disqualification Rules, 1985; (ii) claim has not been made immediately, as required under the Disqualification Rules. Therefore the claim is an afterthought. As such, while Dr. Rehman is liable to be disqualified under Paragraph 2(1)(a) he cannot have the protection of the split under paragrapth 3 of the Tenth Schedule. I, therefore, declare that Dr. Shakeelur Rehman has become disqualified under the Tenth Schedule and Rule 8(1)(b) of the Disqualification rules."

To sum up the gist of the order is as follows:-

i) It was held that 54 members of Janata Dal constituted a faction which had arisen as a result of split in original Janata Dal Party and the faction was deemed to be a new political party and the 54 members shall be treated as members of Janata Dal(S).

ii) It was held that 7 members of Lok Sabha belonging to Janata Dal *viz.*, *Sarvashri* Basavraj Patil, Hemendra Singh Banera, Vidya Charan Shukla, Sarwar Hussain, Bhagey Gobardhan, Devananda Amat and Dr. Bengali Singh, had incurred disqualification for being members of Lok Sabha in terms of para 2(1)(b) of the Tenth Schedule and they had ceased to be members of Lok Sabha with immediate effect and their seats fell vacant.

iii) It was held that Dr. Shakeelur Rehman, member Lok Sabha, belonging to Janata Dal, had incurred disqualification for being member of Lok Sabha in terms of para 2(1)(a) of Tenth Schedule and that he had ceased to be a member of Lok Sabha with immediate effect and his seat thereupon fell vacant.

Consequential Action

The entire decision of the Speaker was notified in the Gazette of India Extraordinary Pat II dated 12 January, 1991 and was reproduced in Lok Sabha Bulletin Part II, dated 14 January, 1991. The eight members of Lok Sabha disqualified by Speaker were treated as having ceased to be members of Lok Sabha. Copies of the decision alongwith forwarding letters were sent to the eight disqualified members, other respondents, petitioners, Shri Vishwanath Pratap Singh, MP & Leader of Janata Dal and Shri Chandra Shekhar, Leader of Janata Dal (S). Copies of the decision were sent to the Minister of Parliamentary Affairs and Election Commission.

Subsequent Development

Shri Vidya Charan Shukla, one of the disqualified members filed before the Speaker, Lok Sabha a review petition dated 27 January 1991, through an Advocate the above order of the Speaker disqualifying Shri Shukla among others, from the membership of the House. Shri Shukla also filed a stay petition requesting for stay of the said order of the Speaker. Though there is no provision either in the Tenth Schedule or the Rules made thereunder for review by the Speaker of his own decision, a view was taken that just as the Supreme Court, has got the power of review, the Speaker being the final authority to decide matters relating to disqualification under the Tenth Schedule has got an inherent power to review his decisions accordingly. Various points raised by Shri Shukla in his review petition and stay application were examined and they were rejected on merits by the Speaker after considering all the aspects involved. Shri Shukla was informed accordingly. Thereafter, review petitions were also filed by other disqualified members *viz.*, Sarvashri Sarwar Hussain, Bhagey Gobardhan, Dr. Shakeelur Rehman, Sarvashri Basavraj Patil, Hemendra Singh Banera and Dr. Bengali Singh. These review petitions were identical in terms with the one filed by Shri Shukla. These were also rejected on merits and members were informed accordingly.

Thereafter, the decision of the Speaker was challenged in the Court of Law, but before any judgement could be given by the Court in the matter, the Ninth Lok Sabha was dissolved..

Janata Dal Case (10LS, 1991)

Initially 4 members expelled from Janata Dal, thereafter 4 other members expelled from party - Expellees seated separately in Lok Sabha - Application made by 20 members of Janata Dal, including expellees, requesting for separate group consequent upon split in Janata Dal -Interim order given by Speaker seating 20 members separately pending final decision - 4 petitions filed against 4 members praying for their disqualification for violating party whip during voting on No-Confidence motion against Government - 8 petitions filed against 8 members praying for their disqualification for having voluntarily given up membership of party - 2 composite petitions filed against 8 expelled members for having voluntarily given up membership of party - All matters considered together by Speaker - Hearings held in Court like manner - Parties to case allowed to be represented by their counsels - Thereafter leaders of political parties also allowed to put forth views on legal points - Speaker in his detailed decision declared 4 members as disqualified - Petitions against other 16 members dismissed on ground that there was a valid split -Delhi High Court granted stay on order of Speaker disqualifying 4 members - As matter remained pending in Court till dissolution of 10 LS said 4 members continued as members of 10 Lok Sabha.

Facts of the Case

The numerical strength of Janata Dal Legislature Party in Lok Sabha, at the time of the constitution of Tenth Lok Sabha was 59.

On 26 December, 1991, a communication was received from Shri Vishwanath Pratap Singh, Leader of Janata Dal Legislature Party in Lok Sabha, intimating that President of Janata Dal (Shri S.R. Bommai) had expelled Shri Ajit Singh, MP, from the primary membership of Janata Dal. On 4 January, 1992, another communication was received from Shri Vishwanath Pratap Singh, intimating that Sarvashri Rasheed Masood, Satyapal Singh Yadav and Harpal Panwar, had been expelled from the primary membership of Janata Dal.

After carefully considering the matter in the light of submissions made by

both the parties, Speaker (Shri Shivraj V. Patil) directed that all the above four members may be seated separately outside the Janata Dal block of seats, in Lok Sabha, for the purpose of functioning in the House. Shri Ajit Singh was allotted separate seat on 14 January 1992. Sarvashri Rasheed Masood, Satyapal Singh Yadav and Harpal Panwar were seated separately *w.e.f.* 25 February 1992.

On 17 July, 1992 voting was held on the motion of No-Confidence moved by Shri Ajay Chakraborty, MP against the PV. Narasimha Rao Government.

On 19 and 20 July, 1992, intimations were received from *Sarvashri* S.R. Bommai and Vishwanath Pratap Singh, regarding expulsion of *Sarvashri* Rajnath Sonkar Shastri, Ram Awadh, Shivsharan Verma and Ramnihore Rai from the primary membership of Janata Dal for a period of six years.

After carefully considering the matter in the light of oral and written submissions, the Speaker directed that all these above four members be seated separately outside the Janata Dal block of seats, in Lok Sabha, for the purpose of functioning in the House. The members were seated separately *w.e.f.* 7 August 1992.

Facts of the Case

On 7 August, 1992 (at 10.30 hours), Sarvashri Ramlakhan Singh Yadav, Ajit Singh, and 18 other members (20 in all) belonging to Janata Dal handed over to the Speaker an application purporting to bear signatures of 24 members of Lok Sabha, requesting the Speaker to seat them separately in Lok Sabha and accord them recognition consequent upon split in Janata Dal. This application, called by them as 'notice' was marked as 'D1'. The 20 members again signed 'D1' in the presence of the Speaker on being asked to do so. These included eight members who were expelled from the primary membership of Janata Dal in December 1991, January 1992 and July 1992.

Three purported signatories to D1 *viz.*, Sarvashri Hari Kewal Prasad, Ram Prasad Singh and Ram Naresh Singh, came before the Speaker on the same day (7.8.92) and disowned/denied their alleged signatures on D1. Their recorded statement containing their denial was marked as 'D2'. Yet another purported signatory to D1 *viz.* Shri Sripal Singh Yadav, did not turn up either to sign D1 or to disown/ deny his alleged signatures on D1.

On 10 August, 1992 Shri Ajit Singh, one of the signatories to D1, wrote to Speaker requesting to seat the said twenty members separately in the House. This letter was marked as 'D3'.

'D1' was sent for comments of Shri Vishwanath Pratap Singh, M.P. and Leader of Janata Dal in Lok Sabha on 7 August, 1992 and his comments which were received on 11 August, 1992 were marked on 'D4'.

Shri Singh, in his statement filed on 11 August, 1992 stated as follows:

(i) *Sarvashri* Ajit Singh, Rasheed Masood, Harpal Parwar and Satyapal Singh Yadav had been expelled from the primary membership of the Janata Dal by the Party President, Shri S.R. Bommai. Shri Ajit Singh had been expelled on 26 December 1991 and the three others in January 1992.

(ii) Four other members, *viz.*, *Sarvashri* Rajnath Sonkar Shastri, Ramnihore Rai, Ram Awadh and Shivsharan Verma had been expelled from the primary membership of the Party by Shri S.R. Bommai, on 19 July 1992. As such, these 8 members had lost their membership of the Janata Dal Legislature Party.

(iii) *Sarvashri* Ram Sundar Dass, Govinda Chandra Munda, Gulam Mohammad Khan and Rambadan, MPs had violated the whip issued to them, for voting in favour of the No-Confidence Motion moved against the Government on 17 July 1992. Under the provision of Para 2(1) (b) Tenth Schedule of the Constitution of India, they had incurred disqualification and they had ceased to be members of the Lok Sabha from 17 July 1992.

(iv) Thus, out of 20 members, 12 members had incurred disqualification and ceased to be members of the Lok Sabha.

(v) *Sarvashri* Ram Sharan Yadav, Abhay Pratap Singh, Ram Lakhan Singh Yadav, Anadi Charan Das, Roshan Lal, Arjun Singh Yadav, Upendranath Verma and Surya Narain Yadav, the remaining 8 of the 20 members of the Lok Sabha, could not form a group of members consisting of 1/3rd of members of Janata Dal Parliamentary Party who could separate from Janata Dal as per the provision of para 3 of the Tenth Schedule of the Constitution of India. They too had incurred disqualification under para 2(1)(a) to the Tenth Schedule and ceased to be members of Lok Sabha from 7 August 1992.

Shri Vishwanath Pratap Singh, therefore, maintained that the Application of the said 20 members should be rejected.

On the same day i.e. 11 August, 1992 Shri Srikanta Jena, MP, and Chief

Whip of Janata Dal Legislature Party, intimated in writing regarding non-condonation of abstention from voting by said four members on voting on No-Confidence Motion held on 17 July, 1992 and condonation of abstention from voting of three other members.

On the same day, Shri Vishwanath Pratap Singh filed four separate petitions against *Sarvashri* Ram Sundar Dass, Govinda Chandra Munda, Rambadan and Gulam Mohammad Khan, MPs, under the Tenth Schedule to the Constitution, in terms of paragraph 2(1) (b) of the Tenth Schedule praying for their disqualification on the ground that they had abstained from voting contrary to the directions issued by the party at the time of voting on the motion of No-Confidence in the Council of Ministers on 17 July 1992.

On 12 August 1992, the Speaker pronounced his Interim Order seating these 20 members, separately in the House for the purpose of functioning in the House until a final decision was taken in the matter. Accordingly, a footnote was given in party position in Lok Sabha. The 20 members concerned, were intimated of the same in writing on 13 August 1992.

Thereafter, comments on the Interim Order and other connected documents were obtained from the said 20 members and Shri Vishwanath Pratap Singh.

On 19 August 1992, the Speaker held a meeting (first hearing in the case) with Leaders of Parties and Groups in Lok Sabha and the aforementioned members, to discuss matters arising out of the letter dated 7 August 1992. It was decided to hear the parties to the case on points of the facts and law. The Speaker, also proposed that hearings, might be open to the Press.

On 22 August 1992 Shri Vishwanath Pratap Singh filed eight petitions under Tenth Schedule to the Constitution against Shri Ram Sharan Yadav and seven other members praying for their disqualification in terms of para 2(1) (a) of Tenth Schedule to the Constitution.

On 3 October 1992, Shri Srikanta Jena member of Lok Sabha and Chief Whip of the Janata Dal Parliamentary Party, filed two composite petitions under the Tenth Schedule to the Constitution–one against *Sarvashri* Ajit Singh, Rasheed Masood, Harpal Panwar and Satyapal Singh Yadav, MPs and the other against *Sarvashri* Rajnath Sonker Shastri, Ram Awadh, Shivsharan Verma and Ramnihore Rai, MPs–praying for their disqualifications in terms of para 2(1) (a) of the Tenth Schedule on the ground that they had voluntarily given up the membership of the Janata Dal.

Copies of all the petitions were forwarded to the respondents for comments which were received subsequently.

In all, therefore, 14 petitions for disqualification had been filed–12 by Shri Vishwanath Pratap Singh and 2 by Shri Srikanta Jena. Thus, petitions for disqualification had been filed against all the 20 signatories to the application given on 7 August 1992.

Matters arising out of 'D1' and petitions for disqualifications against all the 20 members were heard together by the Speaker, for decision under the Tenth Schedule.

Parties to the case were allowed to plead their cases themselves as well as through their lawyers. Broadly, Code of Civil Procedure was followed in conducting the proceedings. Proceedings were allowed to be watched and reported by Press and Media.

Hearings by Speaker in the case commenced on 19 August 1992 and in all 21 hearings were held (hearings concluded on 2.4.1993). Documentary and oral evidence was produced and adduced by parties to the case. Counsels for the parties advanced detailed arguments. (Shri D.D. Thakur was Counsel for Shri Vishwnath Pratap Singh & Others and Shri Kapil Sibal was Counsel for Shri Ajit Singh & Others).

Preliminary hearings on the issues continued on 4 and 28 September 1992, 23 October 1992, 6 November 1992, and 23 December 1992. The recording of evidence was held on 22, 23 and 25 January 1993.

Another hearing was held on 20 February 1993. The arguments by Shri D.D. Thakur, the Counsel on behalf of Shri Vishwanath Pratap Singh and others were made on 1 to 5 March 1993, and by Shri Kapil Sibal, the Counsel behalf of Shri Ajit Singh and others, on 11 and 15-16 March 1993. The Counsel for Shri Vishwanath Pratap Singh gave a rejoinder on 29-30 March and 2 April 1993. All the hearings were open to the Press.

The entire proceedings of the case were recorded verbatim and also tape recorded.

On 4 May 1993 Speaker held a meeting of leaders of political parties in Lok Sabha on the matter, to hear them on law points.

In January 1993 on the request to a party to the case (Shri Ajit Singh & Others), Speaker obtained a report on the genuineness of signatures of *Sarvashri* Hari Kewal Prasad, Ram Naresh Singh, Ram Prasad Singh and Sripal Singh Yadav on 'D1' from Central Forensic Science Laboratory, Delhi (CFSL). Findings in the

report from CFSL were disclosed by Speaker during the hearing held on 25 January, 1993 and copies thereof were supplied to the parties to the case on demand. Thereafter, the report was kept on record.

The relevant issues framed in the case were.

A. Issues relating to the application filed by 20 Members of Janata Dal on 7.8.1992

(i) Is the application filed under the Constitution of India, any other Law or the Rules of Procedure of Lok Sabha?

(ii) What do the signatories to the application claim?

(iii) At what time and in what manner the claims under the Tenth Schedule to the Constitution of India are to be proved?

(iv) Can the Leader of a Political Party expel a member of his Party and terminate his membership of the Legislature Party, so as to change his rights, obligations and immunities given under the Constitution of India, other Laws or the Rules of Procedure in Lok Sabha?

B. Issues relating to violation of Whip

(i) Did the Petitioner prove that the respondents violated the Whip voluntarily and if so, whether the respondents ceased to be Members of Parliament with effect from 17.7.1992?

(ii) Did the respondents prove that they did not voluntarily refrain from voting?

C. Issue relating to voluntarily giving up the membership of the Political Party

(i) Did the Petitioner prove that the Respondents had become liable to be disqualified under para 2(1) (a) of the Tenth Schedule to the Constitution of India by being signatories to the application given on 7.8.1992?

D. Issues relating to the two composite petitions

(i) Did the Petitioner prove that Shri Ajit Singh and three others had become liable to be disqualified under para 2(1) (a) of the Tenth Schedule to the Constitution of India, by constituting a separate faction of the Janata Dal Party?

(ii) Did the Petitioner prove that Shri Rajnath Sonker Shastri and three others had became liable to be disqualified under para 2(1) (a) of the Tenth Schedule to the Constitution of India, by being signatory to the application given on 7.8.1992 ?

Decision of the Speaker

The Speaker, Shivraj V. Patil, pronounced his detailed and considered decision in the case on 1 June 1993.

The Speaker, also reflected on the moral, legal and political aspects of the case and the law in his detailed decision. The gist of the same is as under:

(i) He felt that the matter was important and complicated, as well as agonising, as it carried implications for democracy and parliamentary system in India. It involved the interpretation of the Tenth Schedule to the Constitution of India and the freedom and rights enjoyed by and obligations of the Indian citizens and their representatives in the Parliament. The Tenth Schedule being a new law, not many precedents were available on the basis of which it could be interpreted and enforced. Besides, it was also not free from lacunae.

(ii) Shri Patil also felt that it was not easy to pass judgement on matters moral. Those who have to deal with matters on the basis of law have restricted scope to apply the principles of morality while deciding the issues. The present matter was also tried to be decided on the basis of law. Moreover, matters and ingredients, political, were often both not straight forward and were difficult. They could solve, create, and complicate issues and problems.

(iii) The present case involved the membership of 20 parliamentarians who were the representatives of more than two crores of Indian citizens. They were elected by the people, and as representatives of the people were expected to come up to the expectations of law. The menace of floor crossing, if uncontrolled, could destroy the parliamentary and democratic system.

(iv) The Speaker felt that to judge was not an easy matter. To do justice, according to one's own light, was the only way available to one who had to decide and judge. That was tried to be done in the present case.

At the outset Speaker in his decision dwelt upon Law points *vis a vis* application of the Anti-Defection Law.

On the point as to how the Anti-Defection Law has to be interpreted, Speaker *inter alia* observed as follows:–

(i) The provisions of the Tenth Schedule have to be interpreted very meticulously and strictly.

(ii) The interpretation can influence very wide and–range of activities and large number of institutions and individuals. The laws creating rights and obligations for citizens and a class of persons and more so for elected representatives of the people have also to be interpreted very carefully and strictly.

(iii) That which is not in the Tenth Schedule cannot be introduced in it. The provisions of the party constitution cannot be read and introduced in the Tenth Schedule.

On the issue of expulsion of members from Political Parties and implications thereof under the Tenth Schedule, Speaker *inter alia* observed as follows:–

(i) In this respect, explanation(a) to para 2 (1) is relevant which provides (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member."

(ii) "This is a constitutional status given to the Member which cannot be taken away from him by expulsion."

(iii) "The Tenth Schedule is framed to curb and control the menace of floor crossing and is relevant to the activities of the Member as a parliamentarian, and to his commissions, omissions, and activities in the legislature rather than to his activities as a party member outside the legislature, not connected with parliamentary activities."

(iv) "A legislator may discharge his duties as a member of his party. He may do his duties as a Legislator. The Tenth Schedule applies to his duties and rights as the Legislator. It does not apply to his rights and duties as a Party member."

(v) "The Speaker is not to be bound by the party constitution. He has to function in accordance with the Tenth Schedule, the Constitution of India and other relevant laws and rules."

(vi) "It is not correct and legal to hold that if a Member of a party is

expelled from its primary Membership, he loses his membership of his legislature party."

(vii) "It is not correct and legal to hold that the party leaders can alter the obligations and rights of the Legislators given to them by the law, by expelling them their primary membership under their party constitution."

(viii) "As there are no provisions in the Tenth Schedule or any other part of the Constitution, the expulsion of the Members for parliamentary purposes is not legal and cannot be allowed."

On the issue whether an expelled member could be declared as an unattached member in the House, Speaker *inter alia* observed as follows:–

(i) "The word unattached is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament."

(ii) "Therefore, it is correct to hold the word has no particular legal meaning attached to it and does not create any obligations or rights for the Member who is declared as unattached."

On the point as to from what date the decision under the Tenth Schedule becomes operative, Speaker *inter alia* observed as follows:–

(i) "The general rule is that the laws made are prospective."

(ii) "If they are intended to be retrospective, that has to be made clear in specific terms in the laws themselves."

(iii) "When two interpretations can be put on the laws, one giving them prospective character and the second giving them the retrospective character, the interpretation which gives them prospective character has to be accepted."

(iv) "The Tenth Schedule of the Constitution of India is prospective and not retrospective in nature, it can just be held that the Tenth Schedule of the Constitution of India is not of retrospective character and the decisions given under its provisions need not be retroactive or retrospective."

(v) "All decisions taken under the Tenth Schedule on the petitions shall be operative from the date of the decision and not retrospectively."

On the issue whether the Speaker has any authority to adjudicate in the matters

relating to the party activities and their leaders' decisions outside the Parliament ? The Speaker *inter alia* observes as follows:–

(i) "The jurisdiction of the Speaker is more pronounced with respect to the activities of the parliamentarians in the Parliament."

(ii) "It is least effective with respect to the activities of the parliamentarians outside the Parliament."

(iii) "The Tenth Schedule is not meant to control, guide and direct the activities of the political parties and their members and to punish the parliamentarians for their commission and commissions outside the Parliament."

(iv) "The Speaker is not expected to dabble in keeping the political parties weak or strong or discipline the parliamentarians for their party purposes."

(v) "In party matters relating to the parliamentarians outside the Parliament, jurisdiction is available to the forums presided over by other authorities and not by the Speaker."

Having dealt with legal points, Speaker took the issues relating to the case under consideration.

With regard to the claim made by the respondents for a split in Janata Dal *vide* their application dated 7 August, 1992 marked 'D1' Speaker observed as follows:

(i) "On the day on which the application was given *i.e.* 7.8.1992, all the signatories to the document were sitting Members of the Parliament belonging to the Janata Dal parliamentary party."

(ii) "However, on the relevant date, *i.e.* 7.8.1992, there were no petitions filed against them."

(iii) "Their number was equal to 20 which is more than one third of 59, which is the number of Members of Janata Dal in Lok Sabha on the relevant date."

(iv) "The signatories to the application in a way indicated that there was a split in the Janata Dal outside the Parliament, as well as parliamentary party of Janata Dal in Lok Sabha."

Speaker, accordingly held that -

"Therefore, the application can be and is allowed to grant their prayer

that they be allowed to sit separately".

With regard to petition relating to violation of whips against Shri Ram Sunder Das, Speaker observed that all the pleas taken by him with regard to the averments made by the petitioners were not convincing.

Speaker accordingly held that :

(i) "It is, therefore, concluded that his act of abstention from voting was not involuntary."

(ii) "The Respondent has become liable to disqualification in terms of para 2 (1) (b) of the Tenth Schedule of the Constitution of India and ceases to be the Member of the Lok Sabha from the date of this decision."

With regard to petition relating to violation of party whip against Shri Govinda Chandra Munda, Speaker observed and held as follows:–

(i) "In view of the unconvincing pleas adopted, evidence given and arguments advanced, it is difficult to hold that the Respondent did not vote involuntarily because of the circumstances beyond his control."

(ii) "It is, therefore, held that he abstained from voting voluntarily and has become liable to be disqualified for being the Member of the Lok Sabha with effect from the date of this decisions."

With regard to petition relating to violation of party whip filed by Shri Vishwanath Pratap Singh against Shri Gulam Mohammed Khan, Speaker observed that the evidence given by him and further other witnesses was not convincing. Speaker further observed that there were contradictions between his oral and documentary evidence and there were also some contradictions in the evidence given by him and his witnesses.

Speaker, accordingly held that :

(i) "In view of these facts, the plea adopted by the Respondent that his abstention from voting was involuntary cannot be accepted."

(ii) "Therefore, it is held that he has become disqualified to be the Member of the Parliament with effect from the date of this decision."

With regard to petition relating to violation of party whip filed by Shri Vishwanath Pratap Singh against Shri Ram Badan, Speaker observed that

pleas taken by him and evidence produced by him with regard to the averments made by the petitioner were not convincing.

Speaker accordingly held that :

"It is not possible to hold that his abstention from voting was involuntary.

It is, therefore, concluded that the Respondent, has incurred the liability of disqualification for being the Member of the Lok Sabha with effect from the date of this decision."

With regard to the petitions relating to voluntarily giving up membership filed by Shri Vishwanath Pratap Singh against Shri Ram Sharan Yadav and seven other members, the Speaker observed as follows:–

(i) "In spite of the contradiction in claims made by both sides, there is so much material in their pleadings, evidence and argument to hold that Janata Dal political party had split before 7.8.1992. The materials is also contained in the submissions made by the parties in the Court of Law and also before the Election Commission. Therefore, the Respondents can claim the immunity provided in para 3(a) (i) of the Tenth Schedule."

(ii) "It is already held that the President of the Janata Dal could not expel Shri Ajit Singh and three others from the parliamentary party of Janata Dal and could not abridge their rights and duties. They continued to be Members of the Parliamentary party of Janata Dal."

(iii) "It is also held that Shri Ram Sunder as and three others were valid Members, of the parliamentary party of Janata Dal and the Lok Sabha on 7.8.1992. So, they could form part of the group on that date, separating from Janata Dal parliamentary party."

(iv) "There is therefore, no difficulty in holding that Shri Ajit Singh and seven other parliamentarians, Shri Ram Sunder Das and three other. Parliamentarians and the Respondents could form a group consisting of 1/3rd Members of Janata Dal in Parliament and could separate from other members of the Janata Dal Parliamentary party without becoming liable to be disqualified."

"The stand of petitioner that the expelled Members of the party lost their membership of the parliamentary party is not valid, legal and correct."

Speaker, accordingly held as follows:

> "Therefore, it is not possible to hold that the Respondents had become disqualified to be Members of the Lok Sabha in terms of para 2(1) (b) of the Tenth Schedule to the Constitution of India.
>
> Therefore, the petitions are dismissed."

With regard to composite petition filed by Shri Srikant Jerna against *Sarvashri* Ajit Singh, Rashid Masood, Harpal Panwar and Satya Pal Singh Yadav on the ground of their voluntarily giving up membership of Janata Dal, Speaker observed as follows:–

(i) "The stand of the petitioner in this petition is quite contrary to the stand of Shri V.P. Singh in other petitions."

(ii) The petitioner treats the Respondents as Members of his parliamentary party even on the date of filing his petition *i.e.* 3.10.1992, and gives up the stand under which his party used to treat the Respondent and four other Members of his parliamentary party as Unattached and not belonging to his party in the Parliament."

(iii) "The stands contradict each other."

(iv) "The Respondents filed their written statement on 4.11.1992."

(v) "They state that they are the Members of the original Janata Dal and as such all other are the Members of the Janata Dal, excepting those who specifically deny to be so."

(vi) "Most other points are denied by them."

(vii) "There is ample evidence in the record to show that there had taken place a split in Janata Dal before 7.8.1992."

(viii) "The Tenth Schedule relates to split in the parliamentary party and not the political party outside the House. It is meant to curb defection. It is not meant to protect political parties outside the Parliament."

Speaker, accordingly held as follows:

"The Respondents, therefore cannot be declared to have become disqualified on the ground of having left their party in insufficient numbers on 5.2.1992.

Therefore, the petition deserves to be and is dismissed."

With regard to the composite petition filed by Shri Srikant Jena against *Sarvashri,* Rajnath Sonkar Shastri, Ramnihore Rai, Ram Awadh and Shiv Sharan Verma on ground of their voluntarily giving up membership of Janata Dal, Speaker

taking the same line of reasoning as in case of composite petition against Shri Ajit Singh & 3 of the members observed that "the stand of petitioner that the expelled members of the party lost their membership the parliamentary party is not valid, legal and correct."

Speaker, accordingly held as follows:

"Therefore, it is not possible to hold that the Respondents had become disqualified to be members of the Lok Sabha in terms of para 2(1) (a) of the Tenth Schedule of the Constitution of India.

Therefore, it is held that the petition deserves to be and is dismissed."

The gist of the Order of the Speaker in the Janata Dal case given on 1 June 1993, is as follows :-

(1) It was held that the 20 members of Parliament who were signatories to the application given by them on 7.8.1992 were the members of Parliament on 7.8.1992 and the request made by them in the said application was allowable and was allowed with respect to the sitting members at that point of time.

(2) It was held that *Sarvashri* Ram Sunder Das, Govinda Chandra Munda, Gulam Mohammed Khan and Rambadan had incurred disqualification for being members of Lok Sabha and had ceased to be the members of Lok Sabha *w.e.f.* the date of the order *i.e.* 1.6.1993.

(3) The petitions for disqualification against the remaining 16 members were dismissed on the ground that when these members separated on 7.8.1992, they were sitting members of the Lok Sabha and were equal to one-third members of Janata Dal Legislature party.

In his detailed and considered decision the Speaker, Shri Shivraj V. Patil, pointed out that "The Tenth Schedule of the Constitution of India had served to a great extent the purpose for which it has been brought into existence. It has some weak points and defects too. They are now thrown up and have become quite visible. They should not be allowed to continue in the body of the law."

The Speaker held that the law should be made more comprehensive so as to provide for possible situations which could crop up in interpreting and enforcing the law, such as, matters pertaining to party activities outside the Legislature, the question of who should decide on cases in relation to the anti-detection law, and the applicability of the whip.

Shri Patil also offered some valuable suggestions, important among them being the Constitution of a Committee to look into the matters relating to the Tenth Schedule, in consultation with the representatives of the Executive at the Centre, the Executive at the State Level, the representatives of the Presiding Officers of the Legislature and Legislators, Jurists and Officers well versed in parliamentary and legislative matters.

Entire decision of the Speaker, was notified in Gazette of India Extraordinary part II, dated 1 June, 1993 and was also included in Bulletin Part - II dated 1 June, 1993.

Copies of the decision alongwith requisite forwarding letters/U.O. notes were sent to 20 members concerned (including 4 disqualified members), petitioners, former Speaker (Shri Rabi Ray), Speakers and Secretaries of State Legislatures. PS to Minister of Parliamentary Affairs, PS to Union Minister, Secretary-General, Rajya Sabha, Leaders of parties/Groups in Lok Sabha, other prominent members and former Secretary-General, Lok Sabha. A cyclostyled copy of the Gazette notification, was also circulated to Election Commission, all Ministries of Government of India.

Thereafter, Shri Ajit Singh and 15 other members were shown in party position in Lok Sabha as belonging to Janata Dal (A).

On 26 July, 1993 (first day of seventh session) Secretary-General, Lok Sabha, laid on the Table of the House an authenticated copy (Hindi & English versions) of the decision of Speaker given on 1 June, 1993 under the Tenth Schedule to the Constitution of India in Janata Dal case.

Subsequent Developments

Subsequently, four disqualified members filed Civil Writ petitions in High Court of Delhi praying for Stay on the order of Speaker, dated 1 June, 1993 disqualifying them from membership of Lok Sabha. On 2 July, 1993 Division Bench of High Court of Delhi passed the following orders in respect of all the petitions :-

> 'We accordingly direct that operation of the order dated 1st June, 1993, disqualifying the petitioner(s) from membership of the House be stayed pending disposal of the Writ petition. The matter shall be listed for final hearing on 21st July, 1993.'

On 6 July, 1993, operative portion of the order of the Court was included in Bulletin Part II for information of members and copies of the order(s) had also

been placed in Parliament Library.

On the same day (6.7.93), Office Memorandum was issued to all Ministries/ Departments of Government of India, Election Commission of India etc., intimating of Delhi High Court's Interim Order. A letter was sent to Secretary, Election Commission, in this respect. A.U.O. note to P.S. to the Minister of Parliamentary Affairs was also sent in this respect for the information of Minister of Parliamentary Affairs. Besides, a circular in this respect was also issued to all officers/branches of the Secretariat.

On 21 July, 1993, the above-mentioned writ petition filed by the four petitioners (the disqualified members) had been listed in the cause list of Delhi High Court of date at Serial No. 306 under the head 'Regular matters' before the Bench consisting of the Chief Justice of Delhi High Court and Justice Dalveer Bhandari. The Writ petitions could not be taken up that day and since then the matter remained pending in the Delhi High Court till dissolution of the Tenth Lok Sabha.

The four members whose disqualification has been stayed by the court were shown in party position in Lok Sabha as belonging to Janata Dal (A) with a corresponding footnote.

Shiv Sena Split Case (10LS, 1992)

Claim for split in Shiv Sena -Claim valid in terms of para 3 of Tenth Schedule - Request for separate group Shiv Sena (B) in Lok Sabha and separate seating to its members acceded to - Later Shiv Sena (B) merged with Congress (I).

Facts of the case

Shiv Sena Legislature Party had initially a strength of four members in Lok Sabha.

Out of four members of Shiv Sena, two members (Sarvashri Ashokrao Deshmukh and Vilasrao Gundewar) claimed, *vide* their letter dt. 30 January 1992, that they had willingly decided to depart from Shiv Sena and formed a new group *viz.* Shiv Sena (B).

They also made a request for accord of recognition to their new group [Shiv Sena (B)] and for allotment of seats separate from Shiv Sena bloc in the House.

Deliberations on and decision in the case

Comments from Shri Moreshwar Save, member and Leader of Shiv Sena in the Lok Sabha were obtained.

Sarvashri Ashokrao Deshmukh and Vilasrao Gundewar and Moreshwar Save were given personal hearing by the Speaker, Shri Shivraj V. Patil, in the matter on 25 February 1992.

After considering the written and oral submissions made by both the parties, it was decided to allocate separate seats to *Sarvashri* Ashokrao Deshmukh and Vilasrao Gundewar in Lok Sabha for the purpose of functioning in the House.

Separate seats were accordingly allotted to the members and they were informed in writing on 28 February 1992.

On a request again being made by the two members on 4 March 1992, to treat their group as Shiv Sena (B) in Lok Sabha, the same was agreed to by the Speaker and the members were informed in writing about it on 5 March 1992.

Consequential changes were made in party position in Lok Sabha and other records.

Subsequent development- Merger of Shiv Sena (B) with Congress (I)

Intimation in writing was received from the said two members of Shiv Sena (B) *vide* their letter dated 6 March 1992 about the merger of their group with Congress (I). They sought further necessary action.

Minister of Parliamentary Affairs *vide* his letter dated 6 March 1992 intimated about the said two Shiv Sena (B) members joining the Congress(I).

Minister made a request for allotment of seats to these two members in Lok Sabha alongwith Congress (I) members.

After examining the matter, the request of the two members of Shiv Sena (B) to merge with Congress (I) was agreed to by the Speaker. The members were accordingly informed in writing on 11 March 1992.

Subsequently, necessary changes were made in party position and other records.

The members were allotted seats alongwith Congress (I) members.

Telugu Desam Case (10LS, 1992)

Claim for split in TDP - Claim valid in terms of para 3 of Tenth Schedule - Request for separate group TDP(V) in Lok Sabha and separate seats to its members acceded to - Later TDP(V) merged with Cong.(I).

Facts of the case

Telugu Desam Legislature Party had initially a strength of 13 members in Lok Sabha.

Shri Bh. Vijayakumar Raju, Leader of Telugu Desam Group in Lok Sabha *vide* his letter dated 10 March 1992 claimed that Telugu Desam Party had split *w.e.f.* 10 March 1992 at a meeting of several hundred members of Telugu Desam Party, including seven members belonging to Telugu Desam group in Lok Sabha. A copy of resolution adopted at the said meeting was enclosed.

Request was made by Shri Bh. Vijayakumar Raju that the Parliamentary Party formed as a result of the said split of which he was the duly elected leader, may be recognised by the Speaker under the Tenth Schedule and the Rules made thereunder and the members of this group might be allotted seats in one bloc separate from the Telugu Desam bloc of seats in the House.

Deliberations on and decision in the case

Speaker, Shri Shivraj V. Patil, after hearing the members concerned on 12 March 1992 and examining the matter, recognised Shri Bh. Vijayakumar Raju as the Leader of the group of Telugu Desam which had split from the original group and directed that the members of the splitaway group of Telugu Desam be allotted separate seats in Lok Sabha for the purpose of functioning in the House. Accordingly, members were allotted separate seats and informed in writing.

Thereafter, when Shri Raju informed that their faction of Telugu Desam would be known as Telugu Desam (V), consequential changes were made in records.

Subsequent development - merger of Telugu Desam (V) with Congress (I)

Subsequently Shri Bh. Vijayakumar Raju and all other members belonging to

Telugu Desam (V) intimated in writing *vide* their letter dated 20 August 1992 that they had resolved to merge with Congress (I) Parliamentary Party.

They requested that their merger with Congress (I) might be agreed to and seats be allotted to them along with members of Congress (I).

Minister of Parliamentary Affairs intimated in writing *vide* his letter dated 24 August 1992, that all the members of Lok Sabha belonging to Telugu Desam (V) had joined Congress (I) party in Parliament.

After examining the matter, the request by the members of Telugu Desam (V) to merge with Congress (I) was agreed to by the Speaker on 27 August 1992.

Accordingly, seats were allotted to these members along with members of Congress (I) and the members were informed accordingly.

Consequential changes were made in party position in Lok Sabha and other records.

Nagaland People's Council Party Split Case (10LS, 1992)

Intimation by lone member of Nagaland People's Council about split in Party and his becoming member of breakaway faction viz. NPC (P) – Party affiliation of member changed from NPC to NPC (P) in Lok Sabha – Subsequent intimation re. his joining Congress (I) – Request for merger acceded to

Facts of the case

Shri Imchalemba was a lone member in Lok Sabha from Nagaland representing Nagaland People's Council (NPC) party at the time of constitution of the Tenth Lok Sabha.

On 20 April, 1992 a letter dated 6 April, 1992 was received from Shri Tiameran, President of Nagaland People's Council (Progressive) [NPC(P)] addressed to the Speaker Tenth Lok Sabha, Shri Shivraj V. Patil, intimating that consequent upon split in Nagaland People's Council (NPC) in a separate Party *viz.* NPC(P) came into being. He also stated that Shri Imchalemba had become member of NPC(P). On the same day a letter dated 9 April, 1992 was received from Shri Imchalemba, confirming the same.

Deliberations on and decision in the case

Since Shri Imchalemba was a lone member belonging to NPC and he had confirmed that consequent upon split in NPC and formation of NPC(P), he had become member of NPC(P), it was decided by the Speaker to treat him as member belonging to NPC(P) in Lok Sabha. Necessary changes were accordingly made in the party position in Lok Sabha and other records.

Subsequent developments - claim for merger with Congress (I) and decision thereon

Subsequently, Shri Imchalemba *vide* his letter dated 29 July, 1992 addressed to the Speaker intimated about his joining the Congress (I).

On getting confirmation from Minister of Parliamentary Affairs [also Chief

Whip of Congress (I)] and examining the matter, Shri Imchalemba was allotted seat in Congress (I) bloc of seats in Lok Sabha, as his request/claim for merger was valid in terms of provisions of para 4 of the Tenth Schedule.

Janata Dal (Gujarat) Merger Case (10LS, 1992)

Intimation from lone member of Janata Dal (G) regarding merger with INC–Minister of Parliamentary Affairs confirmed merger– Request for merger acceded to as it was valid in terms of para 4 of the Tenth Schedule.

Facts of the Case

Shri Naranbhai Jamlabhai Rathava was the lone member representing the Janata Dal (Gujarat) in the Lok Sabha at the time of the constitution of the Tenth Lok Sabha.

On 10 July 1992, Shri Rathava addressed a letter to the Speaker, Shri Shivraj V. Patil, intimating about the merger of Janata Dal (G) with the Indian National Congress (INC) on 7 June 1992 and made a request to treat him as a member of the INC in the Lok Sabha. The Minister of Parliamentary Affairs, in his letter dated 13 July1992, confirmed that Shri Rathava had joined the INC and requested that the member might be alloted a seat in the House along with the INC members.

Deliberations on and decision in the case

After examination of the matter in the light of facts on record and the obtaining legal position, the following factors emerged :

(i) The fact of the merger of Shri Rathava's original political party *i.e.* Janata Dal with the INC had been reported in the official electronic media on 7 June 1992.

(ii) As Shri Rathava was the lone member of the Janata Dal (G) in the Lok Sabha, he satisfied the requirement of the numbers/conditions laid down in para 4(2) of the Tenth Schedule *i.e.* 'not less that two-thirds of the members of the legislature party concerned' should agree to the merger.

(iii) Shri Rathava would not incur any disqualification under the Tenth Schedule to the Constitution if his party was permitted to merge with the INC.

Therefore, Shri Rathava was allotted a seat in the INC bloc of seats in the Lok Sabha *w.e.f.* 13 July 1992.

Consequential changes regarding the party affiliation of the member were made in the party position in the Lok Sabha and other records.

Krishna Marandi and Rajkishore Mahto Case (10LS, 1992)

Violation of party whip re. voting of No-Confidence motion against Government – Petition for disqualification filed by Shri Shailendra Mahto, MP against S/Shri Krishna Marandi & Rajkishore Mahto, MPs – Petition did not comply with requirement of Rules – Dismissed.

Facts of the case

Shri Shibu Soren, MP and Leader of the Jharkhand Mukti Morcha Parliamentry Party addressed two letters dated 24 July 1992 to the Speaker, Lok Sabha, Shri Shivraj V. Patil stating that Shri Krishna Marandi and Shri Rajkishore Mahto, members belonging to the Jharkhand Mukti Morcha (JMM) had not complied with the directive issued by the Party Whip regarding voting on the motion of No-confidence against the P.V. Narasimha Rao Government on 17 July 1992.

Shri Soren stated that while Shri Krishna Marandi was not present in the House at the time of voting, Shri Mahto did not vote for abstention, which acts were contrary to the directive issued by the Party Whip to its members. Shri Soren further stated that he had not condoned the said acts of violation of the party whip by the both members.

Alongwith his letters, Shri Soren forwarded two petitions for disqualification under the Tenth Schedule, dated 29 July 1992 and given by Shri Shailendra Mahto, MP and Whip of the JMM, against Shri Krishna Marandi and Shri Rajkishore Mahto

The petitioner in the two petitions, which were more or less identical in terms, made the following contentions:

(i) A three-line Whip was issued by the Party on 14 July 1992 and again on 16 July 1992, through the Whip and Leader of the Party, to all members of the JMM Parliamentry Party including Shri Krishna Marandi and Shri Rajkishore Mahto. The members were directed through the whip to be present in the House and abstain from voting by pressing the 'Abstention' button at the time of voting on the Motion of No-confidence against the P.V. Narasimha Rao government.

(ii) On 17 July, 1992 when the Motion of No-Confidence was put to vote, Shri Krishna Marandi absented himself from the House contrary to the directive issued by the Party Whip without obtaining the permission of the Party to such absence.

(iii) During the voting that day, Shri Rajkishore Mahto did not press the 'Abstention' button and thus acted contrary to the directive issued by the Party Whip without obtaining the permission of the Party to such refraining from voting.

The petitioner prayed that the members may be disqualified from the membership of the Lok Sabha in terms of para 2(1)(b) of the Tenth Schedule. He also enclosed along with his petition-(i) zerox copies of the whips issued by the Party; and (ii) Form II, stating that the absence and the abstention from voting by Shri Marandi and Shri Mahto had not been condoned.

On perusal of the record in the office, it was seen that during the voting on the No-confidence Motion on 17 July 1992, Shri Krishna Marandi was absent and Shri Rajkishore Mahto neither participated in the voting by pressing any of the three buttons meant for 'Ayes', 'Noes', or 'Abstention', nor did he give any slip to record his vote.

On examination of the petitions, it was found that the annexures in the case of both petitions, were not signed and verified by the petitioner as required under Rule 6(7) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985. The petitioner was, therefore, asked verbally as well as in writing to remove the deficiency in the petitions. Subsequently, on 14 October 1992, the petitioner on being contacted, informed that he was not interested in pursuing the petitions.

Decision of the Speaker

On 23 October, 1992, the Speaker directed that the petitions would stand dismissed, if the documents in the annexures were not signed and verified as per the provisions contained in the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, on the expiry of the first week of the ensuing Session *i.e.* the 5th Session of the Tenth Lok Sabha. Since no response was received from the petitioner even after the stipulated time, the Speaker dismissed both the petitions under Rule 7(2), on 2 December 1992. The petitioner was accordingly informed on 3 December 1992 in writing.

Janata Party Split Case (10LS, 1992)

Claim for split in Janata Party - Claim valid in terms of para 3 of Tenth Schedule - Request for separate group Samajwadi Party in Lok Sabha and separate seating for its members acceded to.

Facts of the case

Janata Party had initially a strength of four members in Lok Sabha.

Sarvashri Uday Pratap Singh, Chhotey Singh Yadav and Ram Sagar, members belonging to Janata Party in Lok Sabha in their joint letter dated 29 September, 1992 claimed that a split had taken place in the party.

The members requested that they may be seated separately from Janata Party bloc of seats in Lok Sabha and their group be recognized as 'Samajwadi Party' with Shri Ram Sagar as their leader.

Deliberations on and decision in the case

Comments of Shri Chandra Shekhar, member and Leader of Janata Party in Lok Sabha were obtained.

Thereafter, Shri Chandra Shekhar and concerned three members were given personal hearing by the Speaker, Shri Shivraj V. Patil, on 22 October 1992.

After considering oral and written submissions of both the parties it was decided to seat these three members separately, as requested by them.

Accordingly, the members were seated separately *w.e.f.* 26 October 1992 and the members were informed in writing.

Subsequently, on filing of relevant documents as required under the Anti-Defection Rules, by the members, their request to treat their group as 'Samajwadi Party' was acceded to by Speaker *w.e.f.* 9 January 1993.

Consequential changes were made in party position in Lok Sabha and other records.

Janata Dal (A) Split Case (10LS, 1993)

Split claimed in Janata Dal (A) by 7 members — Members claiming split voted against No-Confidence motion – Minister of Parliamentary Affairs informed that the 7 members had been admitted to Congress (I) – Members allocated separate seats in Lok Sabha for functional purposes – Composite petition against members filed – Disqualification sought of 6 out of 7 members on ground of violation of party whip while voting on No-confidence Motion – Alternatively disqualification sought against all 7 members on ground of voluntarily giving up membership of JD (A) and merging with Congress (I) – Petitioner did not pursue case thereafter – In the meantime petitioner and 9 other members informed that they had decided to merge with Congress (I) – Another member of JD (A) filed an application requesting to substitute his name as petitioner in the petition against the 7 members split-away group, and a composite petition against the petitioner and 9 other members on ground of voluntarily giving up membership – Original petitioner and subsequent petitioner filed written statements stating that they did not wish to pursue the cases – View was taken that original petition has to be decided since proceedings were initiated and it would not be discussed in default even if the petitioner decided not to pursue and there was no occasion for intervention by a third party – Speaker held: Evidence showed that split took place – Petition dismissed – Substitute petition and other petition by the subsequent petitioner did not survive in view of withdrawal of the same.

Facts of the Case

Janata Dal (A) Legislature Party, which came into existence as a result of a split claimed in Janata Dal, had a numerical strength of 20 members with Shri Ajit Singh as its leader. On 28 July, 1993 (at 16.15 hrs.) Shri Ram Lakhan Singh Yadav handed over a letter of the same date signed by him and six other members belonging to Janata Dal (A) *viz.* Sarvashri Roshan Lal, Abhay Pratap Singh, Govinda Chandra Munda, Ram Sharan Yadav, Anadi Charan Das and Gulam Mohammad Khan

requesting for a separate group in Lok Sabha. Subsequently, at about 17.30 hrs. that day (28.7.93), all the seven signatories to the said letter came to the office of the Secretary-General, Lok Sabha in Parliament House and confirmed the contents of the letter, and again signed the letter on its left margin, in the presence of Secretary-General and other officers concerned of Lok Sabha Secretariat.

On that day *i.e.* 28 July, 1993, during the voting on a Motion of No-confidence in the Council of Ministers, Shri Ram Lakhan Singh Yadav and the said other members voted against the Motion. On 3 August, 1993, a letter dated 2 August 1993 was received from the then Minister of Parliamentary Affairs informing that Shri Ram Lakhan Singh Yadav and six other members who had made a request to be seated separately in Lok Sabha had been admitted to Congress (I) * and they be allotted seats in Congress (I) bloc of seats. Comments in this respect were obtained from Shri Ajit Singh. After carefully considering the matter in the light of the comments of Shri Ajit Singh and further submissions by Shri Ram Lakhan Singh Yadav and others, it was decided ** to seat the said seven members separately outside the Janata Dal (A) bloc of seats in Lok Sabha for the purpose of functioning in the House.

In a related development, there were allegations by Shri Ajit Singh and some other members that Shri Govinda Chandra Munda, one of the signatories to the above letter dated 28 July, 1993 was pressurised by a Minister and some members to correct his vote to 'No' in favour of the Government at the time of voting on the No-confidence Motion held on 28 July, 1993. Comments in this respect were obtained from the Minister and the members concerned who had denied the respective allegations made against them in the matter. Shri Munda in his letter dated 29 July, 1993 intimated that he had voted against the motion of his free will. Besides, at the time of recording a statement in the matter, when Shri Munda was asked specifically if any member or members or Minister or Ministers had brought any kind of pressure on him in the matter of vote cast by him, he emphatically denied the same.

Shri Rajnath Sonkar Shastri, MP and the then Chief Whip of Janata Dal (A) Legislature Party in Lok Sabha on 12 August, 1993, intimated in writing that Shri

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* Sarvashri Gulam Mohammad Khan and Govinda Chandra Munda in their separate identical letters dated 4 August 1993 stated that they along with other members led by Shri Ram Lakhan Singh Yadav had merged with Congress(I) Parliamentary Party. No such requests were received from Shri Ram Lakhan Singh and remaining four members of the group.

** The members were accordingly seated separately w.e.f. 29 September 1993 Decision on requests for merger by said members with Congress(I) was kept pending in view of a petition for disqualification filed by Shri Ajit Singh subsequently against the members.

Ram Lakhan Singh Yadav and five other members (excluding Shri G.C. Munda) had voted contrary to the party directive without prior permission, at the time of voting on the No-confidence Motion held on 28 July, 1993 and that the party had decided not to condone the violation of the party directive by the said six members.

On 26 August, 1993, Shri Ajit Singh filed a composite petition under the Tenth Schedule to the Constitution against the said seven members *viz. Sarvashri* Ram Lakhan Singh Yadav, Ram Sharan Yadav, Abhay Pratap Singh, Roshan Lal, Gulam Mohammad Khan, Anadi Charan Das and Govinda Chandra Munda.

The petitioner contended that six out of the seven respondents *viz. Sarvashri* Ram Lakhan Singh Yadav, Ram Sharan Yadav, Abhay Pratap Singh, Roshan Lal, Gulam Mohammad Khan, Anadi Charan Das at the time of voting on the Motion of No-confidence held on 28 July, 1993 voted contrary to the party directives and hence had become subject to disqualification under paragraph 2(1) (b) of the Tenth Schedule.

In his alternative plea, the petitioner submitted that since the letter written by the respondents on 28 July, 1993 requesting for a separate group amounted to giving up the membership of the original political party, the seven respondents (including Shri G.C.Munda) had become liable to be declared disqualified under paragraph 2(1) (a) of the Tenth Schedule.

Copies of the petition were forwarded to respondents for comments which were received subsequently.

Processing of the petition and deliberation thereon

Matters arising out of the petition and related issues were considered together for a decision under the Tenth Schedule to the Constitution. After considering the comments of the seven respondents Speaker (Shri Shivraj V. Patil) decided to hold hearings in the matter.

Parties to the case were allowed to plead their case themselves as well as through their Counsels. Broadly, Code of Civil Procedure was followed in conducting the proceedings. The entire proceedings were recorded verbatim and also tape recorded. First hearing in the case by the Speaker was held on 17 December, 1993 which was attended by the petitioner, respondents and their Counsels (Shri D.D. Thakur was Counsel for the petitioner and Shri Kapil Sibal was Counsel for respondents). However, during the subsequent hearings held on 11 April, 6 June and 24 August, 1994, neither the petitioner nor his Counsel was present.

The main issues for consideration in the case were :-

(i) Whether Shri Ram Lakhan Singh Yadav and 5 other respondents (excluding Shri G.C. Munda) have incurred disqualification, under paragraph 2(1) (b) of the Tenth Schedule for voting in the House contrary to the party directive (as prayed by the petitioner in his main plea); or

(ii) Whether all the 7 respondents by making a request for separate group have incurred disqualification under paragraph 2(1) (a) of the Tenth Schedule for voluntarily giving up membership of their political party (as prayed by petitioner in his alternative plea).

There had been a significant development while the hearings in the case were in progress. On 30 December, 1993, Shri Ajit Singh (the petitioner) and nine other members of Janata Dal (A) informed that they had decided to merge with Congress(I). After examining the matter, seats were allotted to Shri Ajit Singh and others in Congress(I) bloc of seats in Lok Sabha and they were treated as members of Congress(I).

In another development, Shri Upendra Nath Verma, MP belonging to Janata Dal (A) filed (i) an application to substitute his name as petitioner in the petition against Shri Ram Lakhan Singh Yadav and other in place of Shri Ajit Singh; (ii) a composite petition for disqualification against Shri Ajit Singh and 9 other members who had merged with Congress (I).

Hence, during the fourth and final hearing held on 24th August, 1994 (which was also not attended either by the petitioner or by his Counsel) apart from the main issues, another additional issue emerged for consideration *viz.* is it permissible for a third party to intervene in the proceedings before the Speaker in respect of a petition for disqualification under the Tenth Schedule. Shri Kapil Sibal, Counsel for the respondents in his oral argument and written submissions on this issue submitted that once the proceedings under the Tenth Schedule in respect of a petition for disqualification were set in motion, there was no occasion for any intervention by a third party.

As regards the main issues in the case, Shri Sibal submitted that since a valid split had taken place in the Janata Dal (A) Legislature Party in the Lok Sabha and the 7 Respondents comprising the faction which arose pursuant thereto, constituted more than 1/3rd of the total strength of the Janata Dal (A) in Lok Sabha, they were not subject to the rigours of para 2 of the Tenth Schedule, being within the exception

set out in paragraph 3 of the said Schedule.

On a specific query being made by the Speaker, Shri Sibal submitted that under the provisions of the Tenth Schedule and the Rules made thereunder, the petition could not be dismissed in default even if the petitioner decided not to pursue the matter.

In view of this emerging situation, Speaker on 29th November, 1995 called a meeting of the Petitioner (Shri Ajit Singh), the Respondents (Shri Ram Lakhan Singh Yadav and others) and Shri Upendra Nath Verma, MP to discuss the matters involved in the case. During the meeting, the petitioner submitted a written statement stating that he did not wish to pursue the case. Shri Upendra Nath Verma also filed a written statement stating that he did not wish to press his (i) application for substitution of his name as petitioner in this case and (ii) composite petition for disqualification against Shri Ajit Singh and 9 other members. The said written statements by Shri Ajit Singh and Shri Upendra Nath Verma were countersigned by the Speaker and kept on record.

Decision of the Speaker

After taking into account all the facts and circumstances of the case, Speaker, Shri Shivraj V. Patil, pronounced his decision in the case on 3 January, 1996, wherein he dismissed the composite petition by Shri Ajit Singh against Shri Ram Lakhan Singh Yadav and other respondents.

Gist of the decision is as follows:–

(i) The evidence that had come on record showed that the respondents had split from the original party. Moreover the petitioner had stated in writing that he was not interested in pursuing his petition against the respondents. Hence, it was held that the membership of the respondents could not be terminated.

(ii) As regards the issues involving Shri Govinda Chandra Munda's voting on No-Confidence Motion, it was held that in view of the findings that the respondents had split from the original party, it was not necessary to go over these issues and that his membership could not be terminated.

(iii) It was also held that the matter of Shri Upendra Nath Verma's becoming the petitioner in this case did not survive after his written statement to the effect that he was not interested in pressing his

application for getting himself impleaded as the petitioner.

It logically followed from these observations that a breakaway group in Janata Dal (A) comprising seven members had come into existence. Keeping in view intimation dated 2 August, 1993 from Minister of Parliamentary Affairs was about admission of all seven members in Congress (I) and letters dated 4 August, 1993 from Sarvashri Gulam Modh. Khan and G.C. Munda to this effect and also taking account the fact that Shri Ram Lakhan Singh Yadav was inducted into Union Council of Ministers (*i.e.* Congress Government). Subsequently, it was put up for orders whether the said seven members be formally shown on the strength of Congress (I) Party in Lok Sabha in the party position in Lok Sabha. The Speaker, however, on 11 March 1996 felt that since no fresh request for merger had been made by concerned members/Congress(I) after his decision on the petition against the members, no action in this regard was required.

Consequential Action

The entire decision of the Speaker was reproduced in Bulletin Part-II dated 22 January, 1996 and notified in the Gazette of India Extraordinary, Part-II, dated 24 January, 1996.

Haryana Vikas Party Merger Case (10LS, 1993)

Intimation re. merger of Haryana Vikas Party with Congress (I) – Request by lone member of HVP in Lok Sabha for being treated as member of Congress (I) – Request for merger acceded to

Facts of the case

Shri Jangbir Singh was a lone member in Lok Sabha representing Haryana Vikas Party (HVP) at the time of constitution of Tenth Lok Sabha.

On 26 November, 1993, Shri Jangbir Singh, addressed a letter to the Speaker, Shri Shivraj V. Patil, intimating about his joining the Congress (I) in Lok Sabha, consequent upon merger of Haryana Vikas Party with the Indian National Congress. Member requested that he may be treated as a member of Congress (I) and allotted a seat in the Congress (I) block of seats in Lok Sabha.

The Minister of Parliamentary Affairs in his letter dated 28 November, 1993 confirmed the Shri Jangbir Singh had joined the Congress (I) and requested the Speaker that the member may be allotted seat in Lok Sabha alongwith members of Congress (I).

Deliberations on and decision in the case

After examining the matter, Shri, Jangbir Singh was allotted seat in Congress (I) bloc of seats in Lok Sabha as his request for merger was valid in terms of provisions of para 4 of the Tenth Schedule. Consequential changes regarding party affiliation of the member were made in the party position in Lok Sabha and other records.

Janata Dal Split Case (10LS, 1994)

Claim for further split in Janata Dal - Claim valid in terms of para 3 of Tenth Schedule - At the outset request for separate seating by members acceded to - Initially request made to treat the group as JD(G) - Thereafter intimation received re. group's recognition as Samata Party by Election Commission - Requisite documents filed - Decision taken to treat breakaway group as Samata Party in Lok Sabha.

Facts of the case

On 21 June 1994 at 3.30 P.M., 14 members of Lok Sabha, *viz. Sarvashri* Md. Yunus Saleem, Rabi Ray, Chandrajeet Yadav, Manjay Lal, Syed Shahabuddin, Abdul Ghafoor, Mahendra Baitha, Brishin Patel, Mohan Singh (Deoria), Hari Kewal Prasad, George Fernandes, Hari Kishore Singh, Ram Naresh Singh and Nitish Kumar belonging to Janata Dal handed over to the Speaker, Shri Shivraj V. Patil, at his residence a letter dated 21 June 1994, duly signed by them claiming that "consequent upon split in Janata Dal....(they) have decided to sit as a distinct political group in the Lok Sabha." They further requested that they may be allotted separate seats in Lok Sabha and also provided with "other facilities to function as a political party in the House."

The said 14 members signed the letter again in the presence of the Speaker.

At the outset, a copy of the above-mentioned letter dated 21 June 1994 from the 14 members was sent to Shri Sharad Yadav, MP and Leader of Janata Dal in Lok Sabha. There was, however, no response from Shri Yadav.

Further communications

Shri Chandrajeet Yadav, MP (one of the signatories to the above letter dated 21 June 1994, *vide* his letter dated 29 June 1994 to the Speaker furnished particulars of office bearers of the said breakaway group unanimously elected at a meeting of the breakaway group Janata Dal Parliamentary Party held on 28 June 1994.

Subsequently, Shri Mohan Singh, MP (also one of the signatories to the above letter) *vide* his letter dated 15 July 1994, addressed to Speaker, referring to the

letter dated 29 June 1994 from Shri Chandrajeet Yadav regarding office bearers of their group, informed that their breakaway group of 14 members, may be known as 'Janata Dal (G)' in Lok Sabha. Thereafter, the member *suo motu* filed duly filled in Form I signed by Shri Chandrajeet Yadav (named as leader of the group in Lok Sabha), Constitution of the party and other documents as required under Rule 3 of the Anti-Defection Rules. Subsequently, Form III in respect of all the said 14 members were received.

All these documents were kept on record for future use.*

Decision on the Members' requests for separate seating and group in Lok Sabha.

The request by the 14 members for separate seating in Lok Sabha, was acceded to by the Speaker. Separate seats were accordingly allotted to the members w.e.f. 20 July 1994.

As regards, showing the said group of 14 members as Janata Dal (G) in party position in Lok Sabha and other records, it was decided to keep the decision in the matter pending for a while.

Subsequent developments - Intimation regarding the group's recognition as Samata Party by Election Commission.

On 6 December 1994 a letter addressed to Secretary-General, was received from Shri Chandrajeet Yadav wherein the member intimated that their group *i.e.* Janata Dal(G) had decided to change its name as 'Samata Party' and the Election Commission on their application, recognized 'Samata Party' as a National Party. Member also stated that he was the leader of Samata Party in Lok Sabha and made a request that their party may be "recognized as 'Samata Party' in the House and..... mentioned as such in all the communications."

Subsequently, *Sushri* Jaya Jaitly, General-Secretary, Samata Party, addressed a communication dated 30 November 1994 to the Speaker forwarding therewith copies of (i) the letter dated 27 October 1994 from Election Commission of India, addressed to *Sushri* Jaitly, intimating about the registeration of Samata Party under section 29A of the Representation of People Act, 1951, as a political party and (ii) order dated 23 November 1994 given by the Chief Election Commissioner, in respect of application of Samata Party for its recognition as a National Party.

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* As decision in the matter regarding showing JD(G) as separate group in Lok Sabha was pending at that time.

CEC's order in the matter

The following facts emerged from the perusal of the narrative portion of the order of Chief Election Commissioner:-

(1) When the group of Janata Dal led by Shri S.R. Bommai was recognized as a majority group by the Election Commission *vide* its order dated 16.10.1994, the breakaway group of Janata Dal [Janata Dal(G)] led by Shri George Fernandes decided on 19.10.1994 to rename their party as Samata Party.

(2) On an application before the Election Commission for registration of Samata Party, the Commission registered the Samata Party as a political party under section 29A of the Representation of People Act, 1951 w.e.f. 27.10.1994.

(3) The Samata Party filed an application dated 25.10.1994 before the Election Commission for its recognition as a National Party under the Election Symbols (Reservation and Allotment) Order, 1968.

The Chief Election Commissioner after considering the oral submissions made by the party and facts available on record with the Commission, held that:

> "....Samata Party is born out of split in JD and the poll performance of the members of the House of the People and State Legislative Assemblies who are in the Samata Party should be credited to it, on the same analogy as was applied to recognition of JD(S) in the order of 16.04.1994, to meet the ends of justice, equity and fair play.
>
> As per records and individual affidavits filed before the Commission, the number of Members of Lok Sabha in Samata Party are fifteen..."
>
> The Chief Election Commissioner, thereafter, passed the following order (on 23.11.1994):
>
> "I hereby recognize Samata Party as a National Party and reserve the Symbol 'Flaming Torch' for the said Party."

Decision re. the group's status in Lok Sabha

As this group of 14 members which had separated from Janata Dal had been recognized by the Election Commission, the competent authority to accord recognition to the political parties, as Samata Party, it was decided to show this breakaway group of 14 members as Samata Party in party position in Lok Sabha and other records for functional purposes. No formal communication in this respect was, however, sent to the members concerned.

AIIC (T) Merger Case (11LS, 1996)

Report in press re. merger of AIIC(T) with INC - 2 out of 4 members of AIIC(T) intimated Speaker about their decision to continue in AIIC(T) – Claim by other 2 members of AIIC(T) for re-integration of AIIC(T) with INC – Speaker held: No concept of re-integration of political parties under scheme of provisions of Tenth Schedule; claim for re-integration of AIIC(T) with INC and request of members for allocation of seats in INC bloc of seats not acceded to – Members allotted separate seats in Lok Sabha adjacent to INC bloc of seats.

Facts of the case

All India Indira Congress (Tiwari) [AIIC(T)] had initially a strength of four members *viz.Sarvashri* Narayan Dutt Tiwari, Tilak Raj Singh, Sis Ram Ola and Satpal Maharaj.

Shri Narayan Dutt Tiwari *vide* his letter dated 23 May 1996, addressed to the Speaker, Shri P.A. Sangma, intimated that Shri Satpal Maharaj, MP would be the Chief Whip of their party in the Lok Sabha. Subsequently, *Sarvashri* Sis Ram Ola and Satpal Maharaj joined the Union Council of Ministers in the United Front Government in the capacity of Minister of State in the Ministry of Chemicals and Fertilizers and Minister of State in the Ministry of Railways, respectively.

The position in respect of the party affiliation of the members of AIIC(T) and the party's office bearers in Lok Sabha remained unchanged till February, 1997.

However, since 11 December, 1996 there had been reports in Press regarding the merger of AIIC(T) with Indian National Congress and admission of Shri Narayan Dutt Tiwari and Shri Arjun Singh (not a member of Parliament) in the Indian National Congress.

In a related development, *Sarvashri* Sis Ram Ola and Satpal Maharaj, in a jointly signed letter dated 15 February 1997 addressed to the Speaker, intimated about their decision to continue in AIIC(T) and that henceforth the leader of the party would be Shri Sis Ram Ola and Shri Satpal Maharaj would be the Chief Whip of the party.

Thereafter Shri Narayan Dutt Tiwari *vide* his letter dated 24 February, 1997 intimated the Speaker about the re-integration of AIIC(T) with the Indian National Congress. It was further intimated that the party had unanimously passed a resolution on 11 December 1996 regarding its integration with the INC led by Shri Sitaram Kesri and that consequent upon this decision Shri Narayan Dutt Tiwari and Tilak Raj Singh, members of AIIC(T) had joined INC in the Lok Sabha. Shri Tiwari had requested that he and Shri Tilak Raj Singh be allotted seats in INC bloc of seats in Lok Sabha.

The letter was signed only by Shri Tiwari and did not bear the signatures of Shri Tilak Taj Singh.

The copy of resolution dated 11 December, 1996 enclosed by Shri Tiwari with that letter did not indicate the fact as to whether the General Body meeting was attended by Shri Tilak Raj Singh and whether he also agreed to the proposed re-integration.

Shri Narayan Dutt Tiwari in his further letter dated 10 March, 1997 addressed to the Speaker reiterated the position with regard to the "re-integration" of AIIC(T) with the Congress (I) and stated that "AIIC(T) ceased to have any independent existence" after this reintegration and that Shri Narayan Dutt Tiwari and Shri Tilak Raj Singh "have joined the Indian National Congress (I) Parliamentary Party" as a consequence thereof.

Shri Tiwari requested the Speaker to issue necessary instructions for allotting seats to them in the Congress(I) bloc of seats in the Lok Sabha.

Shri Sontosh Mohan Dev, Chief Whip of Congress (I) in his letter dated 10 March 1997 confirmed the admission of *Sarvashri* Narayan Dutt Tiwari and Tilak Raj Singh in the Congress (I) Parliamentary Party and made a request for allocation of seats to them in the Congress(I) bloc of seats in Lok Sabha.

Shri Narayan Dutt Tiwari in his subsequent communication dated 2 April, 1997 addressed to the Speaker had sought for an immediate decision on their requests for allocation of seats to them in the Congress (I) bloc of seats in view of the vote of confidence by the United Front Government proposed to be taken up on 11 April, 1997.

The following submissions were made by Shri Tiwari in support of their earlier claims:–

(i) There is no concept of split in a Legislature party neither in para 3 of the Tenth Schedule nor in any other constitutional provision. Split specifically denotes a split in the 'original political party'.

(ii) There had been no split in the political party of AIIC(T) at any stage.

(iii) There had only been an unanimous resolution at the General Body meeting of AIIC(T) for re-intergration of the party with INC. Shri Tiwari and Shri Singh joined INC in pursuance of this resolution and they had been admitted by INC.

Thereafter, comments from both the parties to the case *viz.* (i) *Sarvashri* Narayan Dutt Tiwari and Tilak Raj Singh, MPs; and (ii) Sarvashri Sis Ram Ola and Satpal Maharaj, MPs were called for with regard to their respective claims.

Comments of Parties to the case

In his comments Shri Narayan Dutt Tiwari reiterated the position with regard to the "re-intergration" of AIIC(T) with INC. It was further stated that AIIC(T) ceased to have any independent existence after this re-integration and that Shri Tiwari and Shri Tilak Raj Singh, MPs.... "in pursuance of (their) party directive joined the Indian National Congress Parliamentary Party and... were duly accepted as its members." Shri Tilak Raj Singh also reiterated the submission made by Shri N.D. Tiwari.

Sarvashri Sis Ram Ola and Satpal Maharaj in their detailed comments refuted the claim regarding complete re-integration of AIIC(T) with INC. The members emphasized that they continued to remain identified with their original recognized political party [AIIC(T)].

Deliberations on and examination of the case

On an appraisal of the facts on record, the following factors were taken note of:–

(i) Of four members of AIIC(T) two members *viz. Sarvashri* N.D. Tiwari and Tilak Raj Singh claimed re-integration of AIIC(T) with INC following a unanimous resolution to this effect by the party. Two other members *viz.Sarvashri* Sis Ram Ola and Satpal Maharaj while contesting this claim had taken a position that they continued to be members of AIIC(T).

(ii) The intimation by *Sarvashri* Ola and Satpal Maharaj to Speaker to continue as members of AIIC(T) was received prior to Shri Tiwari's claim for re-integration of AIIC(T) with INC.

(iii) All through Sarvashri Tiwari and Tilak Raj Singh had been persisting upon their claim for re-integration of AIIC(T) with INC. There is no concept of 're-integration' of political parties under the scheme of provisions in the Tenth Schedule. The crux of the case basically relied upon the question of determination of the validity or otherwise of a merger of AIIC(T) with INC.

(iv) In terms of paragraph 4(2) of the Tenth Schedule the merger of the original political party of a member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger. In this case since only two members of the legislature party which had a strength of four in the House had agreed to the merger of the political parties could not be deemed to have taken place. Consequently, therefore a valid merger of legislature parties could not take place.

After examination of the matter in the light of the facts on record and the obtaining legal position, a view was taken that the claimed merger was not sustainable under the provisions of para 4 of the Tenth Schedule. Hence, a view was taken that it would not be feasible to accede to the request made by Sarvashri N.D. Tiwari and Tilak Raj Singh in their letters for allocation of seats to them in INC. However, members were allotted separate seats in Lok Sabha adjacent to the INC bloc of seats, by the Speaker in exercise of his powers under Rule 4 of the Rules of Procedure use and Conduct of Business in Lok Sabha which provides that "the member shall sit in such order as the Speaker may determine."

Samata Party Split Case (11LS, 1996)

Claim for split in Samata Party - As claim was valid in terms of para 3 of Tenth Schedule members of breakaway group treated as members of Samajwadi Janata Party (Rashtriya) and allotted separate seats.

Facts of the case

Samata Party had initially a strength of eight members in Lok Sabha.

Subsequently three of the eight members of Samata Party in Lok Sabha *viz.* Sarvashri Chandra Shekhar, Ram Bahudur Singh & Bhakta Charan Das *vide* their joint letter dated 2 August, 1996, intimated the Speaker, Eleventh Lok Sabha, Shri P.A. Sangma that at a meeting of Samata Party held on 2 August, 1996, they had 'unanimously decided to constitute a group representing (their) faction which has arisen as a result of split in Samata Party'. A copy of resolution adopted by the members in this respect had been enclosed.

The members requested Speaker to take appropriate action in the matter and accorded recognition to their faction.

> [Initially the members in their joint letter did not indicate the name of their group. However, subsequently it was recorded by them in the said letter that the "name of their party would be Samajwadi Janata Party (Rashtriya)"]

Deliberations on the decision in the case

At the outset, a copy of the said letter from Shri Chandra Shekhar and others was sent to Shri George Fernandes, MP and Leader of Samata Party in Lok Sabha, for his comments in the matter, if any. There was, however, no response from Shri Fernandes.

The Speaker after consideration of the matter made the following announcement in the House on 12 September, 1996:

> "..... After giving a careful consideration to the matter, particularly in the light of the provisions of the Tenth Schedule to the Constitution and the Rules made thereunder, I have decided to seat (*Sarvashri*

> Chandra Shekhar, Ram Bahadur Singh & Bhakta Charan Das) separately in Lok Sabha for the purposes of functioning in the House. This breakaway group of Samata Party shall be known as Samajwadi Janata Party (Rashtriya)."

Consequential changes were made in the party position in Lok Sabha and other records.

Madhya Pradesh Vikas Congress Merger Case (11LS, 1996)

Intimation from lone member of Madhya Pradesh Vikas Congress regarding merger with INC–Chief Whip, INC confirmed merger– Request for merger acceded to as it was valid in terms of para 4 of the Tenth Schedule.

Facts of the Case

Shri Madhavrao Scindia was the lone member representing the Madhya Pradesh Vikas Congress (MPVC) in the Lok Sabha at the time of the constitution of the Eleventh Lok Sabha.

On 6 November 1996, Shri Scindia addressed a letter to the Speaker Shri P.A. Sangma, intimating about the merger of the MPVC with INC on 4 November 1996 and made a request to be treated as a member of the INC in the Lok Sabha.

Initially, there was no intimation/confirmation from the INC regarding the merger of the MPVC with the INC and admission of Shri Scindia to the INC.

A copy of the letter received from Shri Scindia was, therefore, forwarded to the Leader of the INC in the Lok Sabha seeking confirmation in the matter.

Subsequently, Shri Santosh Mohan Dev, MP and Chief Whip of the INC, *vide* his letter dated 23 December 1996, confirmed the joining of the INC by Shri Scindia and requested that he might be allotted a seat in the House along with members of his party.

Deliberations on and decision in the case

After examination of the matter in the light of the facts on record and the obtaining legal position, the following factors emerged:

(i) Shri Scindia being the lone member of the MPVC Legislature Party in the Lok Sabha satisfied the requirement of numbers/conditions laid down in para 4(2) of the Tenth Schedule for a valid merger *i.e.* 'not less than two-thirds of the members of the legislature party concerned' should agree to the merger.

(ii) The fact of the merger of the MPVC with the INC and admission of the Shri Scindia to the INC had been confirmed by the Chief Whip of the INC in the Lok Sabha.

(iii) The merger was permissible

Therefore, on 27 December 1996, the Speaker, decided to treat Shri Scindia as a member of the INC in the Lok Sabha.

Shri Scindia was informed of the decision of the Speaker on 30 December 1996 and allotted a seat in the INC block of seats in the House.

Consequential changes regarding the party affiliation of the member were made in the party position in the Lok Sabha and other records.

Karnataka Congress Party Merger Case (11LS, 1996)

Intimation from lone member of Karnataka Congress Party regarding merger with Indian National Congress – Chief Whip, INC confirmed merger – Request for merger acceded to as it was valid in terms of para 4 of Tenth Schedule.

Facts of the case

Shri S. Bangarappa was a lone member in Lok Sabha from Karnataka representing Karnataka Congress Party (KCP) at the time of constitution of Eleventh Lok Sabha.

On 17 December 1996, Shri S. Bangarappa, MP addressed a letter to Speaker, Shri P.A. Sangma intimating about merger of KCP with Indian National Congress (INC) in Lok Sabha. Member requested the Speaker that he may be treated as member of INC in Lok Sabha, consequent upon the said merger. On the margin of the letter Shri Sontosh Mohan Dev, MP and Chief Whip of INC in Lok Sabha had recorded 'Mr. Bangarappa has been duly admitted in our party'.

Subsequently, a letter dated 17 December, 1996 was received from Shri Sontosh Mohan Dev intimating about the merger of KCP headed by Shri. S. Bangarappa with INC on 15 December, 1996. Shri Sontosh Mohan Dev had stated in his letter that consequent upon the said merger 'Shri S.Bangarappa had become a member of Congress (I) Party in Parliament'. He also requested Speaker to treat Shri Bangarappa as a member of INC in Lok Sabha and that seat may be allotted to him in the block of seats allotted to INC in Lok Sabha.

Deliberations on and decision in the case

After examination of matter in the light of facts on record and obtaining legal position, the following factors emerged :–

(i) Shri S. Bangarappa, being a lone member of KCP legislature party in Lok Sabha satisfied the requirement of numbers/conditions laid down in para 4(2) of the Tenth Schedule for a valid merger *viz.* 'not less than two–third of the members of the legislature party' should agree to the merger.

(ii) The fact of merger of KCP with INC and admission of Shri Bangarappa had also been confirmed by Chief Whip of INC in Lok Sabha.

(iii) Merger of KCP with INC in Lok Sabha was permissible.

Accordingly, on 19 December, 1996 the Speaker decided to treat Shri S. Bangarappa as member of INC in Lok Sabha. Member was intimated about decision of the Speaker on 20 December, 1996. Member was allotted seat in INC block of seats in Lok Sabha. Consequential changes regarding the party affiliation of the member were made in the party position in Lok Sabha and other records.

Janata Dal Split Case (11LS, 1997)

Claim for split in Janata Dal – Request made for accord of recognition to breakaway group and separate seating for its members – Claim for split valid in terms of provisions of para 3 of Tenth Schedule – Members of breakaway group treated as members of RJD in Lok Sabha for functional purposes and allotted separate seats.

Facts of the Case

Janata Dal had initially a strength of 45 members in Lok Sabha.

On 5 July, 1997 16 of the 45 members of Janata Dal in Lok Sabha *viz.* Prof. Ajit Kumar Mehta, Sarvashri Pitambar Paswan, Chun Chun Prasad Yadav, Capt. Jai Narayan Prasad Nishad, Virendra Kumar Singh, Shrimati Bhagwati Devi, Shri Lal Babu Prasad Yadav, Shrimati Kanti Singh, Sarvashri Anil Kumar Yadav, Ram Kripal Yadav, Girdhari Yadav, Chandradev Prasad Verma, Mohd. Shahabuddin, Mohd. Ali Asraf Fatmi and Shri Taslimuddin in their joint letter dated 5 July, 1997 addressed to the Speaker, Eleventh Lok Sabha, Shri P.A. Sangma, intimated that consequent upon split in Janata Dal '(they) have decided to sit as a distinct political group in Lok Sabha.' They further requested that they may be allotted separate seats in Lok Sabha and also provided with "other facilities to function as a political party in the House."

Thereafter, on 23 July, 1997 Prof. Ajit Kumar Mehta and others in their further joint letter to the Speaker had stated that they all belong to Rashtriya Janata Dal headed by Shri Lalu Prasad. The members requested that their faction in Lok Sabha may be accorded recognition and reiterated their request for separate seating and other facilities in Lok Sabha (Speaker minuted on this letter that all the members had signed the same in his presence).

Deliberations on and decision in the case

The matter was examined in the light of the following factors:

(i) Under the scheme of provisions of the Tenth Schedule to the Constitution, in the absence of a petition for disqualification, it is not for the Speaker to either decide upon the factum of split or accord

recognition to the faction emerging as consequence of a split in a legislature party;

(ii) Recognition to political parties which have representation in legislatures, comes within the domain of the Election Commission of India;

(iii) In Lok Sabha subject to fulfillment of conditions under para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating etc., to the breakaway faction in Lok Sabha, strictly for the purpose of functioning in the House; and

(iv) In the case under consideration the concerned 16 members did constitute the requisite one-third for a valid split in terms of para 3 of the Tenth Schedule.

After carefully considering the matter in the light of legal position and facts on record, the Speaker on 27 August, 1997 decided to seat the said 16 members separately in Lok Sabha as members belonging to Rashtriya Janata Dal, for functional purposes in the House.

Consequential Action

Accordingly, the members were informed of the Speaker's decision in writing on 28 August, 1997. The members were also informed that the said arrangement may not be construed as any recognition as such to Rashtriya Janata Dal by the Speaker as the issue or recognition comes exclusively within the domain of the Election Commission of India.

Requisite changes were made in the party position in Lok Sabha and other records.

Beatrix D'Souza Case (12LS, 1998)

Intimation by a nominated member that she opted for membership of Samata Party – Member opted for membership of the party within 6 months of her taking seat in Lok Sabha – Leader of Samata Party confirmed member's admission to party – Member treated as belonging to Samata Party as it was permissible under provisions of Explanation b(ii) to para 2 r/w para 2(3) of Tenth Schedule.

Facts of the case

Twelfth Lok Sabha was constituted on 10 March, 1998.

On 24 March, 1998 Dr. (Mrs.) Beatrix D'Souza and Lt. Gen.(Retd.) N. Foley, MPs had been nominated to Twelfth Lok Sabha under article 331 of the Constitution of India by the President of India to represent the Anglo-Indian Community. They took oath and signed Roll of Members and took their seats in the House on 25 March 1998.

Subsequently, Dr.(Mrs.) Beatrix D'Souzxa *vide* her letter dated 31 March 1998 addressed to the Speaker, Shri G.M.C. Balayogi intimated that under the provisions of the Constitution, she had opted for the membership of Samata Party in Lok Sabha.

Deliberations on and decision in the case

A copy of said letter dated 31 March, 1998 from Dr.(Mrs.) Beatrix D'Souza was forwarded to Shri George Fernandes, MP & Leader of Samata Party in Lok Sabha for his comments.

Shri George Fernandes *vide* his letter dated 4 June, 1998 intimated that Dr.(Mrs.) Beatrix D'Souza had been accepted as a member of Samata Party in Parliament.

On an appraisal of legal position and facts on record, the following factors were taken note of:

(i) In terms of provisions of Explanation b(ii) to para 2 read with para 2(3) of the Tenth Schedule to the Constitution, a nominated

member can opt to join any political party within a period of six months after his/her taking seat in the House after complying with the requirements of article 99 of the Constitution (i.e. making oath/ affirmation) without incurring disqualification under the Tenth Schedule.

(ii) Dr.(Mrs.) Beatrix D'Souza a nominated member who took oath on 25 March, 1998, was within her rights to join any political party by 26 September, 1998 without incurring disqualification under the Tenth Schedule.

(iii) Member's admission in Samata Party had been confirmed by the Leader of Samata Party in Lok Sabha.

After taking into account the legal position obtaining in the matter in the light of provisions in the Tenth Schedule to the Constitution, on 9 June 1998, the Speaker, Twelfth Lok Sabha , acceded to request of Dr.(Mrs.) Beatrix D'Souza to join Samata Party.

Consequential Action

Dr. D'Souza was treated as member of Samata Party in Lok Sabha *w.e.f.* 9 June, 1998 and was verbally informed about the same. Requisite changes were made in party position in Lok Sabha and other records.

Arunachal Congress Party Split Case (12LS, 1999)

Of the 2 members of Arunachal Congress 1 member *viz.* Shri Wangcha Rajkumar claimed split in party - Comments called for from other member Shri Omak Apang as per practice - Despite repeated reminders he did not furnish comments - Subsequently Shri Apang filed petition for disqualification against Shri Rajkumar - Annexures to petition not signed and verified as per Rules - Petition dismissed on ground of non-compliance of provisions of Rules.

Facts and deliberations in the case

Shri Wangcha Rajkumar *vide* his communication dated 12 January, 1999 intimated the Speaker (Shri G.M.C. Balayogi) about split in Arunachal Congress and requested for accord of recognition to splitaway group in Lok Sabha. Documents on record clearly established the fact that there had been a split in Arunachal Congress political party. As out of two members of Arunachal Congress in Lok Sabha, claim had been made by one member (a number which is more than one-third of strength of party in Lok Sabha) conditions for a valid split in terms of paragraph 3 of Tenth Schedule to the Constitution had been fulfilled. Nevertheless, keeping in view principles of natural justice, comments of Shri Apang, the other member of the Party, who was Minister of State for Tourism also, on communication of Shri Wangcha Rajkumar were sought on 18 January, 1999. Thereafter, despite repeated reminders and personal requests to Shri Apang, he did not proffer his comments.

On 13 March, 1999, Shri Rajkumar met the Speaker and made a request to accord recognition to splitaway group of Arunachal Congress in Lok Sabha. Member made further written request to the Speaker in this respect *vide* his letter dated 15 March, 1999. On the same day, Shri Apang was requested to expedite his comments if any, in the matter. On 16 March, 1999, Shri Apang met the Speaker and requested for extension of time upto 18 March, 1999 for furnishing his comments. Speaker acceded to Shri Apang's request for extension of time.

Finally on 31 March, 1999, when even on grant of further time Shri Apang did not furnish his comments, Speaker took decision *ex-parte* in the matter. It was decided to treat Shri Rajkumar as a member belonging to Arunachal Congress (M)

for functional purposes in House.

Consequential changes were made in party position and other records.

On 15 April, 1999, Shri Omak Apang gave a petition under the Tenth Schedule to the Constitution for disqualification of Shri Wangcha Rajkumar, in terms of para 2(1)(b) of Tenth Schedule to the Constitution. Shri Apang in his petition contended that Shri Rajkumar by not presenting himself during voting in House on 26 February, 1999 acted contrary to party directives.

On examination of petition, it was found that annexures thereto were not signed and verified by petitioner as requested under Rule 6(7) of the Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985.

As for the merits of the case, the following factors were taken into account:

(i) Delay in taking a decision in the matter of split in Arunachal Congress was attributable to the non-furnishing of comments by Shri Apang in the matter, despite repeated reminders.

(ii) Equity demanded that he furnished the comments as early as possible.

(iii) But for Shri Apang's non-cooperation a decision in the matter could very well have been taken by the Speaker quite early *viz.* in January, 1999 itself or early February.

(iv) It appeared that Shri Apang deliberately maintained silence in not responding to requests for comments with a view to take advantage of the situation at an opportune time.

(v) The plea taken by Shri Apang in his petition that since a split in Arunachal Congress in Lok Sabha was not taken cognizance of in Lok Sabha on 26.02.1999 (date of voting on Bihar resolution) Shri Rajkumar was bound by party whip, was indicative of this fact.

(vi) Such a plea was infact contrary to the rationale behind the provisions of Anti-Defection Rules.

Decision by the Speaker under Tenth Schedule

On 20 April, 1999, Speaker dismissed the petition in exercise of his powers under provisions of Rule 7(2) of Anti-defection Rules.

Denzil B. Atkinson & Beatrix D'Souza Case (13LS, 1999)

Intimation by 2 nominated members that they opted for membership of Bharatiya Janata Party and Janata Dal (United) – Members opted for membership of the parties within 6 months of their taking seats in Lok Sabha – Minister of Parliamentary Affairs and Leader of Janata Dal (United) confirmed member's admission in the respective parties – Members treated as belonging to BJP and JD(U) respectively as it was permissible under provisions of Explanation b (ii) to para 2 r/w para 2(3) of the Tenth Schedule.

Facts of the case

The Thirteenth Lok Sabha was constituted on 10 October, 1999.

On 12 November, 1999, Shri Denzil B. Atkinson and Dr.(Smt.) Beatrix D'Souza, MPs were nominated to Lok Sabha under article 331 of the Constitution of India by the President of India to represent the Anglo- Indian community. The members took oath, signed Roll of Members and took their seats in the House on 29 November, 1999.

Subsequently Shri Denzil B. Atkinson *vide* his letter dated 29 November, 1999 addressed to the Speaker, Shri G.M.C. Balayogi, intimated about his joining Bharatiya Janata Party in Lok Sabha. Dr. (Smt.) Beatrix D'Souza, *vide* her letter dated 29 November, 1999 addressed to the Speaker had stated that under the provisions of the Tenth Schedule to the Constitution, she had opted for the membership of Janata Dal (United) Party in Parliament.

In the Form III filed under the provisions of the Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985, filed by Shri Denzil B. Atkinson on 16 November , 1999 the member indicated his party affiliation as Bharatiya Janata Dal. In the Form III filed under the said Rules, Dr.(Smt.) Beatrix D'Souza on 30 November, 1999 the member indicated her party affiliation as Janata Dal (United).

Deliberations on and decision in the case

A copy of letter received from Shri Denzil B. Atkinson was forwarded to the PS to Shri Atal Bihari Vajpayee, Prime Minister and Leader of Bharatiya Janata Party in Lok Sabha and Shri Pramod Mahajan, Minister of Parliamentary Affairs for comments. A copy of letter received from Dr.(Smt.) Beatrix D'Souza was forwarded to Shri George Fernandes, Leader of Janata Dal (United) in Lok Sabha for comments.

Shri George Fernandes *vide* his letter dated 6 December, 1999 confirmed about admission of Dr.(Smt.) Beatrix D'Souza in Janata Dal (United) Parliamentary Party.

The Minister of Parliamentary Affairs *vide* his letter dated 17 December, 1999 confirmed admission of Shri Denzil B. Atkinson to Bharatiya Janata Dal Party *w.e.f.* 29 November, 1999.

On an appraisal of legal position and facts on record, the following factors were taken note of –

(i) In terms of provisions of Explanation b(ii) to para 2 read with para 2(3) of the Tenth Schedule to the Constitution, a nominated member can opt to join any political party within a period of six months after his/her taking seat in the House after complying with the requirements of article 99 of the Constitution (*i.e.* making oath/ affirmation) without incurring disqualification under the Tenth Schedule.

(ii) The two nominated members *viz.* Shri Denzil B. Atkinson and Dr. (Smt.) Beatrix D'Souza, who took oath on 29 November, 1999 were within their rights to join any political party by 30 May, 2000 without incurring disqualification under the Tenth Schedule.

(iii) The members' admission in Bharatiya Janata Party and Janata Dal (United) had been confirmed by Chief Whip of BJP (Minister of Parliamentary Affairs) and Leader of Janata Dal (United) respectively.

After taking account the legal position obtaining in the matter in the light of provisions in the Tenth Schedule to the Constitution Dr.(Smt.) Beatrix D'Souza was treated as a member of Janata Dal (United) in Lok Sabha *w.e.f.* 16 December 1999 and Shri Denzil B. Atkinson was treated as a member of Bharatiya Janata

Party *w.e.f.* 21 December, 1999.

Consequential Action

Both the members were verbally informed of the position. Consequential changes were made in the party position in Lok Sabha and other records.

Janata Dal (United) Split Case (13LS, 2000)

Of 22 members of JD(U), 12 members intimated that understanding between Lok Jan Shakti Party and Samata Party as and JD (United) to merge did not work out - Members, therefore, decided to breakaway from JD(U) and sit in separate bloc in LS - As claim for split was valid in terms of para 3 of Tenth Schedule, they were treated as belonging to Janata Dal (Samata) in LS for functional purposes and allotted separate seats - Subsequently at the request made by leader of JD(S), members of the party were treated as belonging to Samata Party in Lok Sabha for functional purposes.

Facts of the case

Janata Dal (United) had initially a strength of 22 members in Lok Sabha.

Out of 22 members of Janata Dal (United), 12 members *viz. Sarvashri* George Fernandes, Nitish Kumar, Digvijay Singh, Mahendra Baitha, Brahmanand Mandal, Manjay Lal, Arun Kumar, Prabhunath Singh, Raghunath Jha, Srinivasa Prasad, Smt. Renu Kumari and Dr. (Smt.) Beatrix D'Souza *vide* their joint letter dated 21 January 2000 intimated the Speaker Shri G.M.C. Balayogi that they were elected to the Lok Sabha on Janata Dal (United) symbol "even though they were members of Samata Party. The Janata Dal (United) symbol was taken by them because of an understanding arrived at between Lok Shakti, Janata Dal and Samata Party to unite after the Lok Sabha elections of 1999." It was further stated that at the meeting of National Executive of Samata Party held on 6 January 2000, it was decided not to proceed with the merger with the Janata Dal (United), since the modalities thereof had not been worked out to their satisfaction. It was also informed that pursuant to the above unanimous decision of Samata Party, they had decided to breakaway from Janata Dal (United) Parliamentary Party and to sit in a separate bloc in Lok Sabha under the leadership of Shri George Fernandes.

Comments of Shri D.P. Yadav, MP and Deputy Leader of Janata Dal (United) Legislative Party in Lok Sabha on the said joint letter received from Shri George Fernandes and 11 other members were called for.

On 21 January 2000, there had been news reports to the effect that the Election Commission of India had decided not to recognize any of the Lok Sabha members of Samata Party as office-bearers of that Party and that they continue to be members of Janata Dal (United) as per their records. In view of the fact that the intimation from Shri George Fernandes and other members to breakaway from Janata Dal (United) was received in the wake of Election Commission's order, a copy of the said order was also sought from the Election Commission.

Secretary, Election Commission of India forwarded two of the Commission's letters dated 19 and 20 January 2000 addressed to Smt. Jaya Jaitly, General Secretary, Samata Party on the question of claim of *Sarvashri* George Fernandes, Manjay Lal and Captain Jai Narain Pd. Nishad, MPs, as the President and members of National Executive of Samata Party, respectively.

Election Commission in their letter dated 20 January 2000 addressed to *Sushri* Jaitly had held the view that as per their records, the 10 members of Lok Sabha *viz. Sarvashri* George Fernandes, Manjay Lal, Capt. Jai Narain Pd. Nishad, Mahendra Baitha, Nitish Kumar, Prabhunath Singh, Digvijay Singh, Brahmanand Mandal, , Arun Kumar, and Dr. (Smt.) Beatrix D'Souza were members of Janata Dal (United) and could not be recognized as the office-bearer of Samata Party by the Election Commission.

It had also been stated in the letter that the Samata Party was the recognized party and enjoyed the privileges under the Symbol Order in the recent elections.

As regards comments of Shri D.P. Yadav on the joint letter received from Shri George Fernandes and others, he did not offer any specific comments even after repeated reminders. It was, therefore, decided to take decision in the matter on the basis of material on record.

Decision by the Speaker

After examination of the matter in the light of material on record and obtaining legal position, the following factors were taken note of:

(i) The Election Commission's order dated 20 January 2000 was not as such material for determining the validity or otherwise of the claim for split in Janata Dal (United).

(ii) In terms of provisions of para 3 of the Tenth Schedule the provisions regarding disqualification do not apply where members make a claim that they constitute a group representing a faction which had arisen as

a result of a split in their original political party and such group consists of not less than one-third of the members of such legislature party.

(iii) As per the prevailing practice in such cases, subject to fulfillment of conditions laid down in para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating etc., to the breakaway faction in Lok Sabha, strictly for the purposes of functioning in the House.

(iv) In the case under consideration, the 12 members constituted one-third of the existing strength of Janata Dal (United) in Lok Sabha, which was 22. Hence the members did not attract the disqualification provisions under para 2(1)(a) of the Tenth Schedule.

Accordingly, on 9 May 2000, the Speaker, Shri G.M.C. Balayogi decided to (a) treat Shri George Fernandes and 11 other members as belonging to a separate group in Lok Sabha strictly for functional purposes; and (b) seat them in a separate bloc in Lok Sabha.

Consequent Action

On 19 May 2000 Shri George Fernandes was intimated about the decision of the Speaker in the matter. A clarification was also sought from Shri Fernandes whether his group was to be known as 'Samata Party' or by any other name in Lok Sabha. Shri Fernandes *vide* his letter dated 17 July 2000 intimated that their group of 12 members had decided to call itself as 'Janata Dal (Samata)'. Consequential changes were made in party position in Lok Sabha and other records with effect from 26 July 2000. All the members of Janata Dal (Samata) also furnished revised Form-III.

Subsequent developments

Shri George Fernandes and 11 other members of Janata Dal (Samata) *vide* their joint letter dated 27 August, 2002 addressed to the Speaker Shri Manohar Joshi intimated that on 18 May 2002, they resolved that "Janata Dal (Samata) group in Lok Sabha, formed after split with Janata Dal (United) has decided to formally merge with Samata Party". A request was made that their group might be known as "Samata Party" in Lok Sabha.

The matter was examined in the light of the following factors :-

(i) The communication dated 18 May 2002 from Shri George Fernandes

and others could not as such be said to be a claim for merger since no party by the name "Samata Party" existed in Lok Sabha;

(ii) It was in fact, a request by said members for renaming their party *viz.* JD(S) as "Samata Party" in Lok Sabha; and

(iii) There would not, therefore, be any implications under the Tenth Schedule, if the said request made by Shri Fernandes and other members for being treated as members of "Samata Party" was acceded to for functional purposes in the House.

Accordingly, on 4 September 2002, Speaker (Shri Manohar Joshi) decided to treat Shri George Fernades and the 11 other members as belonging to "Samata Party" in Lok Sabha strictly for functional purposes in the House.

On 5 September 2002, Shri Fernandes was apprised in writing about the decision of the Speaker. He was also intimated that the same might not, however, be taken as accord of recognition to their group as "Samata Party" since the issue comes exclusively with in the domain of the Election Commission of India. Consequential changes were made in party position and other records in Lok Sabha.

Janata Dal (United) Split Case II (13LS, 2000)

Of 22 members of JD(U), 12 members split away from party and formed JD(S) - Consequently strength of JD(U) was reduced to 10 - Of 10 members of JD(U), 4 members claimed further split in party - As claim for split was valid in terms of para 3 of Tenth Schedule they were treated as members belonging to Lok Jan Shakti Party in Lok Sabha for functional purposes and allotted separate seats.

Facts of the case

Janata Dal (United) had initially a strength of 22 members in Lok Sabha.

Out of these 22 members, Shri George Fernandes, Minister of Defence and 11 other members *vide* their joint letter dated 21 January 2000 intimated about their decision to breakaway from JD (U) Parliamentary Party and sit in a separate bloc in Lok Sabha. After the Speaker's decision in the matter, Janata Dal (S) comprising Shri George Fernandes and other 11 members came into being in Lok Sabha *w.e.f.* 26 July, 2000.

Consequently the strength of Janata Dal (United) was reduced to 10 in Lok Sabha.

Out of these 10 members of JD(U), four members *viz. Sarvashri* Ram Vilas Paswan, Capt. Jai Narain Prasad Nishad, Ramesh C. Jigajinagi and Ramchandra Paswan *vide* their joint letter dated 24 November, 2000 intimated the Speaker that they had unanimously decided to breakaway from JD(U) Parliamentary Party as a result of a split in the JD (U) Political Party and sit in a separate bloc in Lok Sabha as belonging to Jan Shakti Parliamentary Party under the leadership of Shri Ram Vilas Paswan.

They accordingly made a request that they may be treated as members belonging to Jan Shakti in Lok Sabha and allotted seats in Lok Sabha and also provided other facilities to function as a separate Legislature Party in Lok Sabha.

The said four members again signed their joint letter in the presence of the Speaker.

Comments of Shri D.P. Yadav, MP and the leader of JD (U) in Lok Sabha on

the said joint letter received from Shri Ram Vilas Paswan and three other members were called for.

As there was no response from Shri D.P. Yadav in the matter, he was requested to expedite his comments latest by 14 December 2000. Shri Yadav was also informed that in the event of non-receipt of his comments by that time, the Speaker would take a decision in the matter on the basis of material on record.

In the meantime, Shri Ram Vilas Pawan *vide* his letter dated 11 December 2000 addressed to the Speaker intimated that the Election Commission of India "has approved the name of our party as Lok Jan Shakti in place of Jan Shakti". He requested that their party might be known as Lok Jan Shakti Party instead of Jan Shakti. He also enclosed a copy of the Election Commission's letter dated 6 December 2000 in this regard.

Finally on 15 December 2000, when even after grant of further time Shri D.P. Yadav did not furnish his comments, the Speaker proceeded to take decision in the matter *ex-parte*.

Decision by the Speaker

After examination of the matter in the light of material on record and obtaining legal position, the following factors were taken note of:-

(i) In terms of provisions of para 3 of the Tenth Schedule, the provisions regarding disqualification do not apply where members make a claim that they constitute a group representing a faction which had arisen as a result of a split in their original political party and such group consists of not less than one-third of the members of such Legislature Party;

(ii) As per prevailing practice in such cases, subject to fulfillment of conditions laid in para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating, etc., to the breakaway group; and

(iii) In the case under consideration, the concerned 4 members did constitute one-third of the existing strength of JD(U) in Lok Sabha, which was 10.

After carefully considering the matter in the light of legal position and facts on record, on 15 December 2000, the Speaker, Shri G.M.C. Balayogi decided to treat Shri Ram Vilas Paswan and three other members as a separate group belonging to Lok Jan Shakti Party for functional purposes in the House and to seat them in separate bloc in Lok Sabha.

Consequential Action

Shri Ram Vilas Paswan and said three members were allotted separate seats in Lok Sabha. Consequential changes were made in party position and other records in Lok Sabha and members were informed in writing on 18 December 2000. They were also informed that the said arrangement might not be construed as any recognition as such to Lok Jan Shakti Party by the Speaker as the issue of recognition comes exclusively within the jurisdiction of the Election Commission of India.

Subsequently Capt. Jai Narain Prasad Nishad, MP as the leader of Lok Jan Shakti Party in Lok Sabha submitted Form-I containing particulars of all four members of the party and a copy of Constitution and Rules of Lok Jan Shakti Party.

Janata Dal (United) Split Case- III (13 LS, 2000)

Of 22 members of JD (U) , 12 members split away from party and formed JD (S) which was subsequently named as Samata Party – Consequently strength of JD (U) was reduced to 10 – Thereafter 4 out of 10 members of JD (U) split away from the party and formed Lok Jan Shakti Party – Consequently strength of JD (U) was further reduced to 6 – Of remaining 6 members of JD (U), 2 members claimed yet another split in Party – Leader of JD (U) claimed that a member who had been expelled from Samajwadi Party may be treated as their members and hence contended that the strength of JD (U) was 7 and 2 members claiming split did not, therefore, constitute requisite one-third – Plea found not tenable in law and was rejected – As claim for split was valid in terms of para 3 of Tenth Schedule the said 2 members were treated as members of Janata Dal (U) Democratic in Lok Sabha for functional purposes and allotted separate seats.

Facts of the Case

Janata Dal (United) had initially a strength of 22 members in Lok Sabha.

Out of these 22 members, Shri George Fernandes, and 11 other members *vide* their joint letter dated 21 January 2000 intimated the Speaker, Shri G.M.C. Balayogi about their decision to breakaway from JD (U) Parliamentary Party and sit in a separate bloc in Lok Sabha. After examination of the matter, Janata Dal (Samata) comprising of Shri George Fernanades and said 11 members came into being in Lok Sabha with effect from 26 July 2000.

Consequently the strength of Janata Dal (United) was reduced to 10 in Lok Sabha.

Thereafter,4 out of these 10 members of Janata Dal (United) [JD (U)], *viz.* Sarvashri Ram Vilas Paswan, Capt. Jai Narain Pd. Nishad, Ramesh C. Jigajinagi and Ramchandra Paswan *vide* their joint letter dated 24 November 2000 intimated the Speaker, Shri G.M.C. Balayogi that they had unanimously decided to breakaway from JD (U) Parliamentary Party as a result of a split in the JD (U) Political Party

and sit in a separate bloc in Lok Sabha as belonging to Jan Shakti Party under the Leadership of Shri Ram Vilas Paswan. Shri Paswan subsequently intimated the Speaker that their party may be known 'Lok Jan Shakti Party'. After examination of the matter, Lok Jan Shakti Party comprising of Shri Ram Vilas Paswan and three members came into being in Lok Sabha with effect from 15 December, 2000.

Consequently strength of Janata Dal (United) was reduced to six in Lok Sabha.

Subsequently, two of these six members of JD(U) in Lok Sabha *viz.* Sarvashri Devendra Prasad Yadav and Shashi Kumar in their jointly signed letter dated 22 August 2003 intimated the Speaker (Shri Manohar Joshi) that they had decided to breakaway from Janata Dal (U) and requested that separate seating arrangement might be made for them in Lok Sabha and this breakaway group might be recognized as "Janata Dal (U) Democratic".

A copy of the communication was forwarded to Shri Ramjivan Singh, MP and Leader of Janata Dal (United) in Lok Sabha for comments in the matter. Shri Ramjivan in his comments furnished *vide* his letter dated 29 September 2003 stated that due to split in JD (U) in 2000, the strength of JD (U) in Lok Sabha had been reduced from 10 to 6. However, Kunwar Sarv Raj Singh, MP (an expelled member of Samajwadi Party) had been regularly attending the weekly meetings of JD (U) and signing the Attendance Register. He stated that in view of this fact, the strength of JD (U) in Lok Sabha was 7 and not 6. Hence, the said two members did not constitute one-third of the existing strength of JD (U) and therefore, the request for recognition to the breakaway group might not be acceded to.

He further stated that when Shri Sharad Yadav, MP, Union Minister and President of JD (U) spoke to Shri Shashi Kumar, MP in this regard, the member denied being a part of this breakaway group.

In view of assertion by Shri Ramjivan Singh, it was decided that a copy of the said comments might be forwarded to Sarvashri Sharad Yadav, Shashi Kumar and Kunwar Sarv Raj Singh for their comments on the matter.

Shri Shashi Kumar in his comments furnished *vide* his letter dated 29 October 2003 stated that Kunwar Sarv Raj Singh, MP was an expelled member of Samajwadi Party and not a member of JD (U). Hence, the strength of JD (U) was 6. He further stated that he had not committed to Shri Sharad Yadav, MP and Minister of Consumer Affairs, Food and Public Distribution either orally or in writing on the matter. He had requested the Speaker that since they fulfilled all the conditions for a valid split, separate seating arrangements might be made for him and Shri

Devendra Prasad Yadav, MP in Lok Sabha and their group might be recognized as Janata Dal (U) Democratic in Lok Sabha.

Since comments were not received from Shri Sharad Yadav and Kunwar Sarv Raj Singh in the matter, a reminder was issued to them. Subsequently, a final reminder was sent to Shri Sharad Yadav and Kunwar Sarv Raj Singh, MPs on 17 November 2003 with the request to send their comments on the matter within seven days from the date of receipt of the letter. They were also informed that in the event of non receipt of their comments by that time, a decision in the matter might be taken on the basis of material on record.

As no response was received from either Shri Sharad Yadav or Kunwar Sarv Raj Singh even after expiry of the extended time for furnishing their comments, the Speaker proceeded to take decision in the matter on the basis of material on record.

Decision by the Speaker

After examination of the matter in the light of material on record and obtaining legal position, the following factors were taken note of:

(i) Kunwar Sarv Raj Singh, MP was an expelled member of Samajwadi Party in Lok Sabha. Tenth Schedule to the Constitution does not contain provisions to cope with situations arising out of expulsion of members from the primary membership of their political parties. Hence, as per prevailing practice, Kunwar Sarv Raj Singh continued to be shown as the member of Samajwadi Party in Lok Sabha, sitting separately consequent upon his expulsion from the party;

(ii) In terms of provisions of para 3 of the Tenth Schedule, the provisions regarding disqualification do not apply where members make a claim that they constitute a group representating a faction which had arisen as a result of a split in their original political party and such group consists of not less than one-third of the members of such Legislature Party;

(iii) As per prevailing practice in such cases, subject to fulfilment of conditions laid down in para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating, etc., to the breakaway group; and

(iv) Janata Dal (United) in Lok Sabha had a strength of 6 members. The contention of Shri Ramjivan Singh that since Kunwar Sarv Raj Singh was attending weekly meetings of JD (U), he may be considered to be

a member of JD (U) and strength of JD (U) may be taken as 7 instead of 6, was not tenable. The fact that Kunwar Sarv Raj Singh was attending JD (U) meetings could be used for bringing a disqualification petition against him on the ground of voluntarily giving up the membership of his party *i.e.* Samajwadi Party; it could not, however, be used to artificially raise the strength of JD (U) from 6 to 7; and

(v) In the instant case as two out of six members of the party had made a claim for split, the requirement that not less than one-third members should make a claim for split as provided for in para 3 of Tenth Schedule to the Constitution could be said to have been met.

After carefully considering the matter in the light of legal position and facts on record, on 10 December 2003, the Speaker, Shri Manohar Joshi decided to treat Sarvashri Devendra Prasad Yadav and Shashi Kumar, as belonging to "Janata Dal (U) Democratic" for functional purposes in the House and to seat them in a separate bloc of seats in Lok Sabha.

Consequential Action

Sarvashri Devendra Prasad Yadav and Shashi Kumar were allotted separate seats in Lok Sabha. Consequential changes were made in the party position and other records in Lok Sabha and members were informed in writing on 10 December 2003. They were also informed that the said arrangement might not be construed as any recognition as such to Janata Dal (U) Democratic Party by the Speaker as the issue of recognition comes exclusively within the jurisdiction of the Election Commission of India.

Rashtriya Janata Dal Split Case (13 LS, 2001)

Claim for split in RJD and intimation re. formation of RJD (Democratic) by 3 members of RJD – Intimation by President RJD re. expulsion one of these 3 members – Petition for disqualification filed by Leader, RJD legislature party against other 2 members for having voluntarily giving up membership of RJD – Held: Request for RJD (Democratic) in Lok Sabha maintainable; expulsion of member does not affect his party affiliation in Lok Sabha; contention of petitioner re. merger of respondents with another party had no merit – Petition dismissed – RJD (Democratic) came into being in Lok Sabha for functional purposes.

Facts of the case

At the time of constitution of the Thirteenth Lok Sabha, the Rashtriya Janata Dal Legislature Party had a strength of seven members with Dr. Raghuvansh Prasad Singh as its leader.

On 28 April 2001 Mohammad Anwarul Haque and Sarvashri Sukdeo Paswan and Nagmani, members belonging to Rashtriya Janata Dal *vide* their joint letter dated 28 April 2001, intimated the Speaker, Shri G.M.C. Balayogi about split in RJD and formation of RJD (Democratic) party in Lok Sabha comprising of the said three members. On the same day a letter dated 28 April 2001 was also received from Shri Lalu Prasad, President, RJD intimating the Speaker about expulsion of Shri Nagmani, MP from RJD.

Copies of both the letters were forwarded to Dr. Raghuvansh Prasad Singh, MP and the leader of Rashtriya Janata Dal in Lok Sabha for his comments.

Dr. Raghuvansh Prasad Singh *vide* his letter dated 12 July 2001 made the following submissions:–

(i) RJD had expelled Shri Nagmani from the primary membership of the party on 28 April, 2001 and intimated about the same to Speaker on the same day. It was only, thereafter, that day that Shri Nagmani alongwith other two members addressed a communication to the Speaker intimating about their decision to split-away from RJD.

It, therefore, became imperative to take note of the time of receipt of both the communications.

(ii) An expelled member becomes unattached. Hence a claim by such a member of formation of a group was not legitimate.

(iii) Consequently the claim for split by Shri Nagmani, who had since been expelled, alongwith two other members (Mohammad Anwarul Haque and Shri Sukdeo Paswan) was not a valid claim for split in terms of para 3 of the Tenth Schedule.

(iv) No political group by the name of RJD (Democratic) had been formed outside the House. No group by that name had even been formed inside Bihar Vidhan Sabha. Besides, they had not given any intimation regarding the policies, constitution, rules/regulations etc. of their group.

(v) Moreover parleys were on by these members with NDA with a view to joining them which itself was a form of defection.

On 6 August, 2001, the Speaker gave a personal hearing to Dr. Raghuvansh Prasad Singh at his request.

During the hearing, while reaffirming the submissions made by him in his letter dated 12 July, 2001, Dr. Raghuvansh Prasad Singh also contended that Mohammad Anwarul Haque and Shri Sukdeo Paswan had merged with another party. Since it was an entirely new contention, he was requested to furnish the requisite information in writing.

On 7 August, 20001, Dr. Raghuvansh Prasad Singh filed a petition against Mohammad Anwarul Haque and Shri Sukdeo Paswan, MPs under rule 6 of the Members of Lok Sabha (Disqualification on ground of Defection) Rules, 1985.

Dr. Raghuvansh Prasad Singh (hereinafter referred to as petitioner) made the following submissions in his petition:–

"(1) Mohammad Anwarul Haque and Shri Sukdeo Paswan (hereinafter referred to as respondents) had left RJD and joined Bharatiya Loktantrik Party while a decision was yet to be taken on their claim for split (made alongwith Shri Nagmani).

(2) From the action and conduct of the respondents, it was clear that they merged with Bharatiya Loktrantrik Party. Since the respondents do not constitute 2/3rd of the strength of RJD, they do not enjoy the protection under para 4 of the Tenth Schedule.

(3) Petitioner prayed for disqualification of the respondents under para 2(1)(a) of the Tenth Schedule to the Constitution for having voluntarily given up the membership of RJD."

Subsequently the petitioner *vide* his letter dated 13 August, 2001 had requested that the submissions made by him in his petition might also be taken note of in the case of split in RJD.

Processing of petition and deliberations thereon

Copies of the petition were forwarded to the respondents.

The respondents in their comments furnished *vide* their two identical letters dated 27 August, 2001 denied either joining or forming any new political party by the name of Bharatiya Loktantrik Party. They stated that there was a vertical split in RJD on 28 April, 2001 and consequently they together with Shri Nagmani formed a separate political party *viz.* Rashtirya Janata Dal (Democratic). They constituted more than 1/3rd of the strength of RJD in Lok Sabha.

The *issues* for consideration in this case were whether:–

(i) the fact of expulsion of Shri Nagmani from RJD, stated to have taken place before split in the party, had relevance in this case.

(ii) the claim made by the respondents and Shri Nagmani of a split in RJD was valid in terms of para 3 of the Tenth Schedule.

(iii) the respondents had merged with Bharatiya Loktantrik Party.

Decision of the Speaker

Taking into account all the facts and circumstances of the case, the Speaker (Shri G.M.C. Balayogi) pronounced his decision in the case on 6 January, 2002. The Speaker in his decision held as follows :

(1) "Tenth Schedule to the Constitution does not contain provisions to cope with situations arising out of expulsion of members from primary membership of their political parties. Consequent upon the decision of the Speaker, Tenth Lok Sabha in the Janata Dal case, dated 1 June, 1993, the practice in Lok Sabha has been to seat the expelled members separately without any change in their party affiliation, in party position etc., in Lok Sabha.

Hence an expulsion of a member from the primary membership of his political party does not affect his party affiliation in Lok Sabha.

Hence, despite expulsion of Shri Nagmani from the membership of RJD political party, there would not be any consequential change in the strength of RJD legislature party in Lok Sabha. Consequently the issue whether intimation of expulsion of Shri Nagmani from RJD was received earlier than claim of split in RJD by Shri Nagmani & others or subsequently, had no relevance.

The issue number (i) is, therefore, answered in negative."

(2) "In terms of paragraph 3 of the Tenth Schedule to the Constitution, the provisions regarding disqualification on ground of defection do not apply where members make a claim that they constitute a group representing a faction which has arisen as a result of split in their original political party and such group consists of not less than one-third of the members of such Legislature Party.

The said three members do constitute one-third of the existing strength of RJD in Lok Sabha, which is seven.

The only point which is relevant is that at the time of claim for split in RJD, the three members who made the claim did constitute 1/3rd of the strength of RJD in Lok Sabha.

I accordingly on 30 August, 2001 decided to – (i) treat Sarvashri Mohammad Anwarul Haque, Sukdeo Paswan and Nagmani, as belonging to RJD (Democratic) in Lok Sabha, for functional purposes, and (ii) seat them separately in the House.

The issue number (ii) is, therefore, answered in affirmative".

(3) "The two respondents in their comments stated that they had neither formed any political party by the name of Bharatiya Loktantrik Party nor joined any such Party. Besides no claim has been made by any member regarding formation of any party by the name Bharatiya Loktantrik Party in Lok Sabha.

Hence the contention made by the petitioner that the respondents had merged with 'Bharatiya Loktantrik Party' has no merit.

In view of the above discussion, issue number (iii) is answered in negative".

The Speaker, accordingly passed the following order:

"In exercise of the powers conferred upon me under paragraph 6 of the Tenth

Schedule to the Constitution, I, G.M.C. Balayogi, Speaker, Lok Sabha, hereby decide that the petition dated 7 August, 2001 given by Dr. Raghuvansh Prasad Singh, MP against Mohammad Anwarul Haque and Shri Sukdeo Paswan, MPs has no merit and Mohammad Anwarul Haque and Shri Sukdeo Paswan have not incurred any disqualification in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution.

I accordingly dismiss the petition."

Consequential Action

The decision of the Speaker was reproduced in Bulletin Part II dated 28 February, 2002 and notified in the Gazette of India, Extraordinary, Part II dated 28 February, 2002. Copies of the decision were also forwarded to the petitioner, respondents, Secretary, Election Commission of India and Secretary, Ministry of Parliamentary Affairs.

Indian Federal Democratic Party Split Case (13LS, 2001)

Claim for split made by the lone member of Kerala Congress (M) – Member also intimated about his removal/suspension from his political party – No intimation in this regard was received from political party – Since expulsion/suspension of members does not affect their status, no action taken in this regard – As regards split, on examination a view was taken that member's request for split was maintainable. Before member could be treated as member of splitaway group he intimated about merger of his group IFDP which did not exist in Lok Sabha – View was taken that member's claim for merger was maintainable in terms of para 4 of Tenth Schedule. Request for merger allowed – Member treated as belonging to IFDP for functional purposes in Lok Sabha.

Facts of the case

Shri P.C. Thomas was the lone member belonging to Kerala Congress (M) Legislature Party in Lok Sabha at the time of constitution of the Thirteenth Lok Sabha.

Shri P.C. Thomas *vide* his letter dated 5 July, 2001 addressed to Shri G.M.C. Balayogi, Speaker, Lok Sabha intimated that split had taken place in Kerala Congress (M) political party. Member had stated that "being the sole MP of the party in Lok Sabha, the group which I belong to comprises of the whole Parliamentary Party of Kerala Congress (M). This group may kindly be considered as a separate group and all facilities of member in the House may be continued for me". He further stated that several State Committee members, State Executive Committee members, State Secretariat members and a General Secretary of the Party were with him in his group. He further stated that Shri P.C. Thomas, Chairman, Kerala Congress (M) had suspended and removed him from the party against his will. He finally made a request that the said split might be taken cognizance of and allowed.

The intimation regarding suspension from Kerala Congress (M) political party

was given by the member himself. No other communication in this regard was received from the member's political party.

Deliberations and decision on claim for split

On examination of the matter, the following factors emerged:–

(i) It appeared from the member's communication in question that his suspension/removal from Kerala Congress (M) party preceded the claimed split in Kerala Congress (M) political party.

(ii) As per prevailing practice in Lok Sabha even in case of expulsion of members from primary membership of their political parties (which follows suspension), there is no change in party affiliation of such expelled members in Lok Sabha. The only action taken in such cases, is to seat the expellees separately in Lok Sabha.

(iii) Since Shri P.C. Thomas was lone member of Kerala Congress (M) there was no need to allot him separate seat in Lok Sabha consequent upon his removal/suspension from Kerala Congress (M). Hence no action was called for on this aspect.

(iv) As regards claim for split this was the first case in Lok Sabha where a claim for split had been made by a member belonging to a lone member legislature party in Lok Sabha.

(v) In terms of para 3 of the Tenth Schedule to the Constitution for a valid split two conditions have to be fulfilled:

(a) a split in political party must precede a claim for split in legislature party and;

(b) claim for split in the legislature party must be made by a group/ faction of members consisting of not less than one-third of the members of such legislature party.

(vi) It is not possible for a lone member of a legislature party to fulfil the second condition *i.e.* the claim for split should be made by at least one-third of members of the concerned legislature party. The issue therefore, needs to be resolved keeping in mind the spirit of para 3 of the Tenth Schedule.

(vii) Tenth Schedule to the Constitution does not make any distinction between legislature parties on the basis of their numerical strength.

Lone member legislature parties are, therefore, at par with multi-member legislature parties.

(viii) Hence, under the scheme of provisions of the Tenth Schedule, members belonging to lone member legislature parties cannot be deprived of the benefit accruing to members belonging to multi-member legislature parties, under para 3 of the Tenth Schedule.

In view of above position, it was felt that Shri P.C. Thomas, MP could be treated as member belonging to the splitaway faction that had arisen as a result of split in Kerala Congress (M) political party. Since Shri P.C. Thomas did not indicate the name of the splitaway group which came into being consequent upon the split in Kerala Congress (M) political party, it was decided on 23 July, 2001 to request Shri P.C. Thomas to indicate name of his splitaway group and thereafter treat him as member belonging to that group in Lok Sabha for functional purposes.

Other Developments: Intimation re. merger of splitaway group with IFDP

In the meantime, Shri P.C. Thomas *vide* his letter dated 17 July, 2001 had stated that his splitaway group of Kerala Congress (M) had decided to merge with Indian Federal Democratic Party. He further stated that he had joined the new party as a member of the splitaway group and, therefore, his identity in Lok Sabha, thereafter, might be as member of 'Indian Federal Democratic Party' (IFDP).

As the splitaway group which Shri P.C. Thomas's had claimed to have merged with IFDP, was yet to be taken congnizance of as a separate entity in Lok Sabha for want of intimation of the group's name, the member was requested to first indicate the name of his group. The member, thereafter, sent a communication intimating that his group might be known as 'Kerala Congress (T)'.

Deliberations and decision on claim for merger

In view of the fact that the splitaway group which Shri P.C. Thomas had claimed to have merged with IFDP had till that time not come into existence in Lok Sabha, a question arose as to *whether the claim for merger of Kerala Congress (T) with 'Indian Federal Democratic Party' was valid in terms of para 4 of the Tenth Schedule.*

After examination of the matter, it was felt that conditions for a valid merger as laid down in para 4 of the Tenth Schedule could be said to have been fulfilled in the case under consideration due to following reasons:–

(a) As per Shri P.C. Thomas his splitaway group (which became his original political party after the split) had merged with Indian Federal Democratic Party (IFDP) and he had made a claim to this effect. Member had also informed that subsequent to the merger he had become member of IFDP.

(b) The requirement that the claim for merger should be backed by 2/3rd members of group/party which had merged, was also met, since Kerala Congress (T) had agreed to merge.

(c) The deeming provision in para 4(2) was not relevant here, since the lone member of Kerala Congress (T) was the lone member party.

While examining the claim for merger, the following factors were also taken note of:

(a) It was not known whether Kerala Congress (T) existed outside the House;

(b) The Indian Federal Democratic Party (IFDP) with which KC(T) had claimed to have merged, did not have any representation in Lok Sabha.

As per member himself, the party had been recently formed and was yet to be accorded recognition by Election Commission of India.

It was, however, felt that the above two factors were not germane to the case under consideration since following the observations made by Speaker (10LS) in his decision dated 1 June, 1993 in Janata Dal Case (paras 111-135), it was well settled that the Speaker, Lok Sabha is not required to take cognizance of matters relating to party activities outside the House.

After considering all the facts and circumstances of the case, a view was taken that claim of Shri P.C. Thomas for merger could be said to be a valid claim for merger in terms of para 4 of the Tenth Schedule to the Constitution and could, therefore, be taken congnizance of.

Accordingly on 30 August, 2001 it was decided that Shri P.C. Thomas might be straightaway treated as member belonging to Indian Federal Democratic Party (IFDP) and in the circular issued with the revised party position, it might be indicated that KC(M) had merged with IFDP.

Consequential Action

Shri P.C. Thomas was intimated *vide* letter dated 7 September, 2001 that after examining the matter the Speaker, Lok Sabha had decided to treat him as member belonging to IFDP for functional purposes in Lok Sabha *w.e.f.* 30 August, 2001. Member was also intimated that the above arrangement might not be construed as any recognition to IFDP by the Speaker since the issue of recognition came exclusively within the jurisdiction of the Election Commission of India.

Consequential changes were made in the party position in Lok Sabha.

MGR ADMK Merger Case (13LS, 2002)

Lone member of MGR ADMK claimed merger with BJP – Minister of Parliamentary Affairs confirmed the merger – As merger was valid in terms of para 4 of Tenth Schedule member treated as belonging to BJP in Lok Sabha for functional purposes.

Facts of the case

Shri Su.Thirunavukkarasar was the lone member in Lok Sabha representing MGR ADMK Party at the time of constitution of the Thirteenth Lok Sabha.

Shri Su. Thirunavukkarasar *vide* his letter dated 11 February 2002 addressed to the Speaker, Shri G.M.C. Balayogi intimated that his party i.e. MGR ADMK had merged with BJP on 1 February 2002 after a formal merger function held at New Delhi that day, in the presence of Shri Atal Bihari Vajpayee, Prime Minister and Shri Jana Krishna Murthy, BJP President and other senior BJP leaders. He made a request to treat him as a member of BJP and allot seat to him in Lok Sabha accordingly. A copy of the resolution ratifying the merger and adopted at the General Council meeting of MGR ADMK Party was also enclosed.

At the outset, a copy of the said letter from Shri Su. Thirunavukkarasar together with its enclosures was sent to Minister of Parliamentary Affairs to seek the requisite confirmation in this regard.

Subsequently, Minister of Parliamentary Affairs confirmed that Shri Su. Thirunavukkarasar had joined BJP.

Decision in the case

As Shri Su. Thirunavukkarasar, who was the lone member of MGR ADMK Legislature Party in Lok Sabha, satisfied the requirement of conditions laid down in para 4(2) of the Tenth Schedule for a valid merger, on 14 March 2002, the Deputy Speaker, Lok Sabha, Shri P.M. Sayeed, (who was performing the duties of the office of the Speaker at that time, acceded to member's request for being treated as member of BJP. Shri Su. Thirunavukkarasar was accordingly allotted seat in BJP bloc of seats in Lok Sabha. Consequential changes were made in Party Position and other records in Lok Sabha.

Rashtriya Lok Dal Split Case (13LS, 2002)

Of 2 members of Rashtriya Lok Dal, split claimed by 1 member - As claim for split was valid, member treated as member belonging to Lok Dal (Secular) for functional purposes and allotted separate seat

Facts of the case

Rashtriya Lok Dal Legislature Party initially had a strength of two members in Lok Sabha *viz.* Shri Ajit Singh and Shri Amir Alam Khan.

On 22 March 2002, Shri Amir Alam Khan intimated the Deputy Speaker, Lok Sabha Shri P.M. Sayeed, (who was officiating as Speaker, Lok Sabha at that time) that he had formed a separate party by the name "Lok Dal (Secular)". He had requested that his party *viz.* "Lok Dal (Secular)" might be accorded recognition and allotted separate seat in Lok Sabha.

Shri Amir Alam Khan *vide* his letter dated 16 April 2002 reiterated his earlier request.

Copies of both the letters of Shri Amir Alam Khan were forwarded to Shri Ajit Singh, MP and Leader of Rashtriya Lok Dal in Lok Sabha for his comments.

Shri Ajit Singh in his comments furnished *vide* his letter dated 1 May 2002 contented that the claim for split was baseless and Shri Amir Alam Khan was liable to be disqualified in terms of provisions of para 2(1)(a) of the Tenth Schedule.

Shri Ajit Singh was requested to file a proper petition under Tenth Schedule to the Constitution if he sought disqualification of the member. The member, however, did not file any petition.

Comments of Shri Amir Alam Khan were obtained on the letter dated 1 May 2002 of Shri Ajit Singh.

Thereafter, Shri Khan *vide* his letter dated 16 July 2002 while reiterating his earlier request had stated that on 22 March 2002 he called a meeting of Rashtriya Lok Dal Political Party and the party split there itself and consequently the splitaway group by the name of "Lok Dal (Secular)" came into being. He had requested that his party *viz.* "Lok Dal (Secular)" might be accorded recognition and he be allotted separate seat in Lok Sabha.

Decision in the case

Since one out of two members of Rashtriya Lok Dal had made claim for split the requirement of not less than one-third members should make a claim for split as provided for in paragraph 3 of the Tenth Schedule was met in this case.

After examination of the matter in the light of facts on record and obtaining legal position, on 25 July 2002, the Speaker, Shri Manohar Joshi decided to treat (i) Shri Amir Alam Khan as belonging to Lok Dal (Secular) in the Lok Sabha for functional purposes in the House; and (ii) seat him separately in the House.

Consequential changes regarding party affiliation of the Shri Amir Alam Khan was made in the party position in the Lok Sabha and other records. Member was also allotted separate seat in the Lok Sabha.

On 31 July 2002 Shri Amir Alam Khan while being intimated about decision of Speaker to treat him as belonging to "Lok Dal (Secular)" in the Lok Sabha strictly for functional purposes, was informed that the above arrangement might not be construed as any recognition to "Lok Dal (Secular)" by the Speaker. Since the issue of recognition comes exclusively within the domain of Election Commission of India.

Lok Jan Shakti Party Split Case (13LS, 2002)

Two out of 4 members of Lok Jan Shakti Party claimed split in the party – Request made for being treated as members of breakaway group and separate seating in LS – Claim for split valid in terms of provisions of para 3 of Tenth Schedule – Members treated as members of Janata Dal (JP) in Lok Sabha for functional purposes and allotted separate seats.

Facts of the case

Janata Dal (United) had initially a strength of 22 members in Lok Sabha. Following a split in Janata Dal (United), Janata Dal (S) comprising of 12 members came into being in Lok Sabha *w.e.f.* 26 July, 2000. Shri George Fernandes, was the Leader of Janata Dal (Samata). Consequently the strength of Janata Dal (United) was reduced to 10 in Lok Sabha. Following a further split in Janata Dal (United) in November, 2000 a separate group *viz.* Lok Jan Shakti with a strength of 4 members came into being in Lok Sabha *w.e.f.* 15 December, 2000. Lok Jan Shakti Party comprised of Sarvashri Ram Vilas Paswan, Ramchandra Paswan, Ramesh C. Jigajinagi and Capt. Jai Narain Prasad Nishad. Shri Ram Vilas Paswan was the leader of the Lok Jan Shakti Party in Lok Sabha.

Out of these 4 members of Lok Jan Shakti, two members *viz.* Capt. Jai Narain Prasad Nishad and Shri Ramesh C. Jigajinagi, MPs *vide* their joint letter dated 13 August, 2002 intimated Speaker, Shri Manohar Joshi, that at a meeting held on 6 August, 2002 they unanimously decided to breakaway from Lok Jan Shakti Parliamentary Party as a result of split in Lok Jan Shakti Political Party and to sit in a separate block in Lok Sabha as members belonging to Janata Dal (JP) political and parliamentary party.

They accordingly made a request that "they may be treated as belonging to Janata Dal (JP) in Lok Sabha and allotted seats in Lok Sabha as a separate party."

Deliberations on and decision in the case

Comments from Shri Ram Vilas Paswan, MP and leader of Lok Jan Shakti Party in Lok Sabha were called for. Subsequently a reminder was sent to

Shri Paswan on 4 October, 2002 with the request to send his comments on the matter positively by 11 October, 2002 and in the event of non-receipt of his comments by that time, a decision in the matter might be taken on the basis of material on record.

As no response was received from Shri Ram Vilas Paswan, the Speaker proceeded to take a decision in the matter on the basis of material on record.

After examination of the matter in the light of material on record and obtaining legal position, the following factors were taken note of:–

(i) In terms of provisions of para 3 of the Tenth Schedule the provisions regarding disqualification do not apply where members make a claim that they constitute a group representing a faction which had arisen as result of a split in their original political party and such group consists of not less than one-third of the members of such legislature party;

(ii) As per prevailing practice in such cases, subject to fulfillment of conditions laid down in para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating etc. to the breakaway group; and

(iii) In the case under consideration the concerned 2 members did constitute one-third of the existing strength of Lok Jan Shakti in Lok Sabha, which was 4.

After carefully considering the matter in the light of legal position and facts on the records, on 17 October, 2002 the Speaker decided to seat the said two members separately in Lok Sabha as members belonging to "Janata Dal (JP)" for functional purposes in the House and to seat them in the separate bloc in Lok Sabha.

Consequential Action

Shri Ramesh C. Jigajinagi and Capt. Jai Narain Prasad Nishad, MPs were allotted separate seats in Lok Sabha. Consequential changes were made in party position and other records in Lok Sabha and members were informed in writing on 23 October, 2002. They were also informed that the said arrangement might not be construed as any recognition, as such, to Lok Jan Shakti Party by the Speaker as the issue of recognition comes exclusively within the jurisdiction of the Election Commission of India.

Manipur State Congress Party Merger Case (13LS, 2002)

Claim for merger by lone member of MSCP with BJD – Minister of Parliamentary Affairs confirmed merger – Claim for merger valid in terms of para 4 of the Tenth Schedule – Member treated as member of BJP in Lok Sabha for functional purposes and allotted seat in BJP bloc of seats.

Facts of the case

Shri Th. Chaoba Singh was a lone member in Lok Sabha representing Manipur State Congress Party (MSCP) at the time of constitution of Thirteenth Lok Sabha.

Shri. Th. Chaoba Singh *vide* his letter dated 18 November, 2002 addressed to the Speaker, Shri Manohar Joshi intimated that his party *i.e.* MSCP merged with BJP on 14 November, 2002. He had requested that he may be treated as member of BJP in Lok Sabha from 14 November, 2002 onwards and a seat may be allotted to him in the Lok Sabha accordingly.

Deliberations on and decision in the case

At the outset a copy of the said letter from Shri Th. Chaoba Singh was sent to the Minister of Parliamentary Affairs to seek the requisite confirmation in this regard.

Subsequently, U.O. note dated 26 November, 2002 was received from the APS to the Minister of Parliamentary Affairs wherein it was stated that Hon'ble Minister of Parliamentary Affairs had confirmed that Shri Th. Chaoba Singh, MP is now a member of BJP in Lok Sabha. It had also been requested that he may be allotted seat in NDA bloc of seats in Lok Sabha.

As Shri Th. Chaoba Singh who was a lone member MSCP Legislature Party in Lok Sabha satisfied the requirement of conditions laid down in para 4(2) of the Tenth Schedule for a valid merger, on 25 November, 2002 the Speaker, Lok Sabha acceded to member's request for being treated as member of BJP. Member was accordingly allotted seat in BJP bloc of seats in Lok Sabha. Consequential changes were made in Party Position and other records in Lok Sabha.

Rashtriya Janata Dal (Democratic) Split Case-I (13LS, 2003)

Of 3 members of RJD (Democratic), 1 member claimed split in party and intimated about formation of Simanchal Vikas Party – As claim for split was valid in terms of para 3 of Tenth Schedule, the member was treated as member of Simanchal Vikas Party in Lok Sabha for functional purposes.

Facts of the case

Following a split in Rashtriya Janata Dal (RJD), Rashtriya Janata Dal (Democratic), with a strength of three members came into being in Lok Sabha on 30 August 2001.

Subsequently, Shri Sukhdeo Paswan one of the three members of RJD (Democratic) in Lok Sabha *vide* his letter dated 1 December 2003 intimated the Speaker that due to ideological differences, there had been a split in RJD (Democratic) at National level on 9 November 2003 and as a result of this split "Simanchal Vikas Party" came into existence of which, he was the leader. He requested that he may be treated as belonging to "Simanchal Vikas Party" in Lok Sabha for functional purposes in the House and allotted separate seat in Lok Sabha.

A copy of the above letter received from Shri Sukhdeo Paswan was sent to the other two members of RJD (Democratic) *viz.* Mohammad Anwarul Haque and Shri Nagmani, MPs for their comments in the matter.

Mohammad Anwarul Haque and Shri Nagmani in their identical comments furnished *vide* their letters dated 5 and 7 December 2003 respectively stated that they had no objection on claim for split in RJD (Democratic) made by Shri Sukhdeo Paswan and formation of Simanchal Vikas Party by him.

Decision by the Speaker

After examination of the matter in the light of material on record and obtaining legal position, the following factors were taken note of:

(i) In terms of paragraph 3 of the Tenth Schedule to the Constitution, the

provisions regarding disqualification on ground of defection do not apply where members make a claim that they constitute a group representing a faction which has arisen as a result of split in their original political party and such group consists of not less than one-third of the members of such Legislature Party.

(ii) As per prevailing practice, in such cases, subject to fulfilment of conditions under para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating etc., to the breakaway faction in Lok Sabha, strictly for functional purposes in the House.

(iii) RJD (Democratic) in Lok Sabha had strength of 3 members *viz.* Sarvashri Sukhdeo Paswan, Shri Nagmani and Mohammad Anwarul Haque. As one out of three members of the party had made a claim for split, the requirement that not less than one-third members should make a claim for split as provided for in para 3 of Tenth Schedule to the Constitution had been met.

Hence, the disqualification provision under para 2(1)(a) of the Tenth Schedule was not attracted in the instant case.

After carefully considering the matter in the light of legal position and facts on records on 18 December 2003, the Speaker, Shri Manohar Joshi decided to seat Shri Sukhdeo Paswan, MP separately in Lok Sabha as a member belonging to "Simanchal Vikas Party" for functional purposes in the House and to seat him in a separate bloc in Lok Sabha.

Consequential Action

Accordingly, Shri Sukhdeo Paswan was informed of the Speaker's decision in writing on 18 December 2003. The member was also informed that the said arrangement might not be construed as any recognition to the Simanchal Vikas Party by the Speaker since the issue of recognition to the Simanchal Vikas Party comes exclusively within the domain of the Election Commission of India. Before separate seat could be allocated to Shri Paswan, the Thirteenth Lok Sabha was dissolved.

Rashtriya Janata Dal (Democratic) Split Case - II (13LS, 2003)

Of 3 members of RJD (Democratic), 1 member split away from party and formed Simanchal Vikas Party – Consequently strength of RJD (democratic) was reduced to 2 – Thereafter 1 of the 2 members claimed split in party and intimated about formation of 'Shoshit Kranti Dal' – As claim for split was valid in terms of para 3 of Tenth Schedule, the member was treated as member of Shoshit Kranti Dal in Lok Sabha for functional purposes.

Facts of the case

Rashtriya Janata Dal (RJD) which had initially a strength of seven members underwent a split in 2001, as a consequence of which Rashtriya Janata Dal (Democratic), [RJD (Democratic)] with a strength of three members *viz.* Mohammad Anwaral Haque, Sarvashri Sukhdeo Paswan and Nagmani, came into being in Lok Sabha with effect from 30 August 2001.

One of these three members (Shri Sukhdeo Paswan) claimed a split in RJD (democratic), as a result of which "Simanchal Vikas Party" comprising Shri Sukhdeo Paswan, came into being in Lok Sabha with effect from 18 December 2003.

Consequently, strength of RJD (democratic) was reduced to two in Lok Sabha.

Thereafter, one out of these two members of RJD (Democratic) *viz.* Shri Nagmani, MP and Minister of Social Justice and Empowerment on 22 December 2003, intimated Speaker, Shri Manohar Joshi that due to ideological differences there had been a split in RJD (Democratic) at National level on 13 December 2003 and as a result of this split in the RJD(Democratic), 'Shoshit Kranti Dal' came into existence, of which he was the leader. He requested that he may be treated as belonging to 'Shoshit Kranti Dal' in Lok Sabha for functional purposes in the House.

Another communication was received on the same day (22.12.2003), from Shri Mohammad Anwarul Haque, the other member of RJD(Democratic) stating that he had no objection on claim for split in RJD(Democratic) by Shri Nagmani and formation of Shoshit Kranti Dal by him. He further stated that apart from this

he had no other comments in the matter.

Decision by the Speaker

After examination of the matter in the light of facts on record and obtaining legal position, the following factors were taken note of:

(i) In terms of provisions of para 3 of the Tenth Schedule, the provisions regarding disqualification do not apply where member makes a claim that they constitute a group representing a faction which had arisen as a result of a split in their original political party and such group consists of not less then one-third of the members of such Legislature Party;

(ii) As per prevailing practice in such cases, subject to fulfilment of conditions laid down in para 3 of the Tenth Schedule, the Speaker accedes to the request for separate seating, etc., to the breakaway group; and

(iii) As one out of two member of the party had made a claim for split, the requirement that not less than one - third members should make a claim for split as provided for in para 3 of Tenth Schedule to the Constitution was fulfilled.

After carefully considering the matter in the light of legal position and facts on record, on 22 December 2003, the Speaker, Shri Manohar Joshi, decided to treat Shri Nagmani as belonging to "Shoshit Kranti Dal" for functional purposes in the House.

Consequential Action

Consequential changes were made in the party position and other records in Lok Sabha and Shri Nagmani was informed accordingly in writing on 22 December 2003. The member was also informed that the said arrangement might not be construed as any recognition as such to Shoshit Kranti Dal by the Speaker as the issue of recognition comes exclusively within the jurisdiction of the Election Commission of India.

Ingrid Mcleod and Shri Francis Fanthome Case (14LS, 2004)

Intimation by nominated members regarding their joining of Indian National Congress -Option made within 6 months of their taking seat in Lok Sabha – Minister of Parliamentary Affairs and Leader of the Indian National Congress belonging to Indian National Congress as it was permissible under provisions of Explanation b(ii) to para 2 r/w para 2(3) of Tenth Schedule.

Facts of the case

The Fourteenth Lok Sabha was constituted on 17 May 2004.

On 20 October, 2004, Smt. Ingrid Mcleod and Shri Francis Fanthome were nominated to the Fourteenth Lok Sabha under article 331 of the Constitution of India by the President to represent the Anglo-Indian Community. They took oath and signed the Roll of Members and took their seats in the House on 1 December, 2004.

Subsequently, Smt. Ingrid Mcleod and Shri Francis Fanthome *vide* their letters dated 8 and 9 December, 2004 respectively, addressed to the Speaker, Lok Sabha, Shri Somnath Chatterjee intimated about their joining the Indian National Congress with immediate effect.

Decision in the cases

Shri Ghulam Nabi Azad, MP and Minister of Parliamentary Affairs *vide* his letter dated 13 December, 2004 confirmed the admission of Smt. Ingrid Mcleod and Shri Francis Fanthome in the Indian National Congress Party with effect from 8 and 9 December, 2004 respectively, Shri Pranab Mukherjee, MP and Leader of the Indian National Congress in Lok Sabha too, *vide* his letter dated 14 December, 2004, sent similar intimation.

As Smt. Ingrid Mcleod and Shri Francis Fanthome, nominated members had joined a political party well before the expiry of the six months [as stipulated under explanation (b) (ii) to para 2 (3) of the Tenth Schedule] from the date of taking their

seats in the House, they were treated as members of the Indian National Congress with effect from 8 and 9 December, 2004 respectively.

Consequential Action

Smt. Ingrid Mcleod and Shri Francis Fanthome were verbally informed of the position. Consequential changes were made in the party position in Lok Sabha and other records.

RAJYA SABHA

Congress (S) Merger Case (RS, 1986)

Claim of merger of Congress (S) with Congress (I) Party – Request for merger acceded to – Members treated as belonging to the party they merged with.

Facts of the Case

On 9 December 1986, *Sarvashri* A.G. Kulkarni and Suresh Kalmadi, members of the Congress (S) Party in the House, made a claim of merger of their party with the Congress (I) Party, and requested that they be treated as members belonging to that Party.

On receipt of the request, Shri Suresh Kalmadi was requested to furnish a copy of the Congress (S) resolution regarding the merger. The Minister of State in the Ministry of Parliamentary Affairs was also requested to offer his comments in the matter.

The resolution was accordingly furnished by the member. The Minister of State in the Ministry of Parliamentary Affairs *vide* his communication dated 22 February 1987 stated that the names of Shri A.G. Kulkarni and Shri Suresh Kalmadi had since been admitted to the Congress (I) Party in Parliament after the merger of the Congress (S) with the Congress (I) Legislature Party.

Decision of the Chairman

Taking into consideration the facts of the case, the comments of the Minister of State in the Ministry of Parliamentary Affairs and the resolution adopted by the Congress (S) Party about the merger, the Chairman acceded to the request for merger on 23 February 1987. Consequently, the members belonging to the Congress (S) Party were treated as the members of the Congress (I) Party for the purpose of paragraph 4 of the Tenth Schedule.

Janata (G) Merger Case (RS, 1988)

Claim of merger of Janata (G) with Lok Dal (A) – Simultaneous claim of merger of Lok Dal (A) with Janata Party – Request for merger acceded to –Member treated accordingly

Facts of the Case

Shri K. Gopalan, member, *vide* his letter dated 10 April 1988, intimated that his Party, Janata (G), had merged with the Lok Dal (A). He, therefore, requested that he might be treated as a member of the Lok Dal (A) Party. On receipt of the request, the member was asked to furnish a copy of the Janata (G) resolution favouring its merger with the Lok Dal (A). In another communication, Shri Satya Prakash Malaviya, member of the House belonging to the Lok Dal (A) Party had informed about the merger and requested that the name of Shri K. Gopalan might be added in the list of Lok Dal (A) members of the House. Shri Malaviya was also requested to furnish a copy of the resolution of his party favouring such merger. Shri Malaviya, accordingly, sent a copy of the resolution passed on 10 March 1988 at the meeting of the Lok Dal (A) Parliamentry Party.

In a separate communication addressed to the Secretary-General, Rajya Sabha, Shri M.S. Gurupadaswamy, member, stated that the Lok Dal (A) had merged with the Janata Party and Shri K. Gopalan, member of the Janata (G) had joined the party as well.

Besides, Shri Madhu Dandavate, member of the Lok Sabha and Leader of the Janata Party in Parliament, in a communication addressed to the Chairman, Rajya Sabha, stated that in a meeting of the National Executive of the Janata Party held on 5 April 1988 at New Delhi, a resolution was adopted about the merger of the Lok Dal (A) with the Janata Party. He also requested the Chairman to include the names of Shri Ajit Singh, Shri Satya Prakash Malaviya, Shri Rasheed Masood and Shri K. Gopalan in the list of members of the Janata Party. He also enclosed a copy of the resolution for information.

Decision of the Chairman

The matter was considered in the light of the provisions of para 4 of the Tenth Schedule to the Constitution. It was found that the request for merger fulfilled the statutory requirement and hence the merger was approved.

Mufti Mohamad Sayeed Case (RS, 1989)

Petition filed seeking disqualification on ground of voluntarily giving up membership – Earlier respondent intimated Chairman about his severing links with his party – Petition referred to Committee of Privileges for submitting preliminary report – Committee submitted report – Respondent given opportunity of being heard but he did not avail the same – Petition allowed – Respondent disqualified in terms of para 2(1) (a) of the Tenth Schedule.

Facts of the Case

Shri Mufti Mohamad Sayeed, member, Rajya Sabha, in a communication dated 10 March 1989, addressed to the Chairman, Rajya Sabha stated that he had severed his political link and affiliation with the Congress (I) Party on whose ticket he had been elected to the Rajya Sabha from the State of Jammu and Kashmir and requested him to take such action as he might deem necessary. Copies of the said letter were sent to the Prime Minister who was the Leader of the Congress (I) Party in Parliament and to Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs and Deputy Chief Whip of the Congress (I) Party in the Rajya Sabha for information and necessary action.

On 28 April 1989, Shri V. Naryanasamy, member, Rajya Sabha submitted a petition to the Chairman, Rajya Sabha, under the Tenth Schedule to the Constitution and Rules made thereunder, against Shri Mufti Mohamad Sayeed seeking his disqualification from the membership of Rajya Sabha for having voluntarily given up membership of the Congress (I) Party by which he had been set up as a candidate for election to the Rajya Sabha from the State of Jammu and Kashmir.

A copy each of the petition was sent to Shri Mufti Mohamad Sayeed, Shri Rajiv Gandhi, the Prime Minister of India and Leader of the Congress (I) Party and Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs and Deputy Chief Whip of the Congress (I) Party in Rajya Sabha for their comments.

The respondent in his reply, furnished *vide* his letter dated 6 May 1989, stated that he had nothing to add to what he had already written to the Chairman on 10 March 1989. On behalf of the Leader, Congress (I) Party in Parliament,

Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs submitted that he entirely agreed with the contention of the petitioner.

After receiving the comments, the Chairman referred the case to the Committee of Privileges, Rajya Sabha, on 11 May 1989 under Rule 7(4) of the Members of Rajya Sabha (Disqualification on ground of Defection) Rules, 1989, for making a preliminary inquiry and submitting a report to him.

Decision of the Chairman

After taking into consideration all the facts and circumstances of the case and the Report of the Committee of Privileges, the Chairman, Rajya Sabha, Shri Shanker Dayal Sharma pronounced the following order in the Rajya Sabha on 28 July 1989:

> "In exercise of powers conferred under article 102(2) read with paragraph 6 of the Tenth Schedule to the Constitution of India, I, Shanker Dayal Sharma, Chairman, Rajya Sabha hereby decide that Mufti Mohamad Sayeed, an elected member of the Rajya Sabha from the State of Jammu and Kashmir, by voluntarily giving up his membership of Congress (I) – his original political party, has become subject to disqualification for being a member of the Rajya Sabha in terms of paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India..."

Consequential Action

Shri Sayeed accordingly ceased to be a member of the Rajya Sabha with immediate effect. The decision of the Chairman, Rajya Sabha, was published in the Rajya Sabha Bulletin Part II and in the Gazette of India (Extraordinary) Part-I, Section-I on 28 July 1989. Copies were endorsed, amongst others, to the Election Commission of India and Ministries of the Government of India.

Janata Party Merger Case (RS, 1989)

Claim of merger of Janata Party and Lok Dal – To form Janata Dal – Request for merger acceded to – Member treated accordingly

Facts of the Case

On 15 March 1989, Shri M.S. Gurupadaswamy and Shri Virendra Verma, members, and Leaders of the Janata Party and the Lok Dal Party, respectively, intimated the Chairman, Rajya Sabha *vide* their letter dated 15 March, 1989 that on 21 February 1989, at a joint meeting of the members of the Janata Party in the Parliament and the Lok Dal Parliamentary Party, held under the Chairmanship of Prof. Madhu Dandavate, it was decided to form a new party named 'Janata Dal' through the merger of the two parties. It was also stated in the letter that earlier on the same day at two separate meetings of members of the two merging parties, decisions to merge were taken. It was further stated that except Dr. (Smt.) Sarojini Mahishi and Shri Subramanian Swamy of the Janata Party and Shri Ram Awadesh Singh and Shri Shamim Hashmi of the Lok Dal, all other members of the Janata Party and the Lok Dal in Rajya Sabha had joined the 'Janata Dal'. They, therefore, requested to accord recognition to the newly formed party in the Rajya Sabha.

On receiving the request from the aforesaid members, they were requested to furnish (i) a copy each of the resolution adopted by their party individually and of the joint meeting of the two parties for merger and formation of the new party; (ii) a copy of the constitution of the new party; (iii) names of the Leader/other office bearers of the new party; and (iv) names of members of the new party in the Rajya Sabha together with their signatures.

All requisite papers/documents including resolution, the constitution of the Janata Dal and the Rules made thereunder and the constitution of the Janata Dal in Parliament were received. In all, 17 out of 20 members of the Janata Party and five out of seven members of the Lok Dal in Rajya Sabha had come together to form the Janata Dal.

Decision of the Chairman

After taking into consideration the facts of the case and circumstances and being satisfied that all requisite formalities had been completed in accordance with the provisions of the Tenth Schedule to the Constitution and the Rules, Shri Shanker Dayal Sharma, the Chairman, Rajya Sabha recognized the newly formed Janata Dal in Rajya Sabha with effect from 11 April 1989. The decision in this regard was conveyed to Shri M.S. Gurupadaswamy, Leader of the Janata Dal in the Rajya Sabha.

Satya Pal Malik Case (RS, 1989)

Petition filed seeking disqualification on ground of voluntarily giving up membership – Earlier respondent intimated Chairman about his joining Janata Dal – Petition referred to Committee of Privileges – Committee submitted report –Respondent given personal hearing by Chairman – Petition allowed – Respondent disqualified in terms of para 2(1)(a) of Tenth Schedule.

Facts of the Case

Shri Satya Pal Malik, member, Rajya Sabha, who had been elected on the ticket of Congress (I), in a communication, addressed to the Chairman, Rajya Sabha, on 17 July 1989, stated that he had joined the Janata Dal and was working as a Secretary of the Janata Dal.

Copies of Shri Malik's letter were sent to: (i) Shri Rajiv Gandhi, Prime Minister and Leader of the Congress (I) Party in Parliament, (ii) Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs; and (iii) the Leader of the Janata Dal in the Rajya Sabha for comments.

On 27 July 1989, Shri Pawan Kumar Bansal, member, Rajya Sabha, gave a petition under the Tenth Schedule to the Constitution and Rules made thereunder, against Shri Satya Pal Malik, seeking his disqualification for having voluntarily given up his membership of the Congress (I) Party on whose ticket he had been elected to the Rajya Sabha from State of Uttar Pradesh in 1986. The petitioner also alleged that Shri Malik had been indulging in anti-party activities for over one year and had joined the Janata Dal and also become the Secretary of that party.

On receipt of the petition, a copy each thereof was sent to : (i) Shri Satya Pal Malik; (ii) Shri Rajiv Gandhi, Prime Minister of India and Leader of Congress (I) Party in Parliament; and (iii) Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs for their comments.

On behalf of the Leader of Congress (I) Party in Parliament, Shri M.M. Jacob, *vide* his comments dated 2 August 1989, submitted that he entirely agreed with the contention of the petitioner. The respondent *vide* his comments, dated 5 August 1989, stated that he had not voluntarily given up the membership of Congress (I).

After receiving the comments, the Chairman referred the petition to the

Committee of Privileges on 8 August 1989 under Rule 7(4) of the Members of Rajya Sabha (Disqualification on ground of Defection) Rules, 1985, for preliminary inquiry and submitting a report to him.

After the Committee submitted its reports, the Chairman, Rajya Sabha, directed the respondent to appear before him in person on 13 September 1989, in terms of Rule 7(7) of the said Rules, to represent his case before determining the question whether he had become subject to disqualification under the Tenth Schedule to the Constitution. The respondent appeared before the Chairman at the appointed date and time and he was heard in person by the Chairman.

Decision of the Chairman

After taking into account all the facts and circumstances of the case and the Report of the Committee of Privileges, the Chairman, Rajya Sabha, Shri Shanker Dayal Sharma, pronounced the following order in the Rajya Sabha on 14 September 1989:

> "In exercise of powers conferred under article 102(2) read with paragraph 6 of the Tenth Schedule to the Constitution of India, I, Shanker Dayal Sharma, Chairman, Rajya Sabha, hereby decide that Shri Satya Pal Malik, an elected member of the Rajya Sabha from the State of Uttar Pradesh, by voluntarily giving up his membership of Congress (I) – his original political party, has become subject to disqualification for being a member of the Rajya Sabha in terms of paragraph 2(1) (a) of the Tenth Schedule to the Constitution of India.
>
> Accordingly Shri Satya Pal Malik has ceased to be a Member of the Rajya Sabha with immediate effect."

Consequential Action

Shri Malik, accordingly ceased to be a member of the Rajya Sabha with immediate effect. The decision of the Chairman was published in the Rajya Sabha Bulletin Part II and in the Gazette of India (Extraordinary) Part-I, Section-I on 14 September 1989. Copies of the Gazette were endorsed amongst others to the Election Commission of India and Ministries of the Government of India.

AIADMK-I Merger Case (RS, 1990)

Claim of merger of two groups of AIADMK which split earlier – Merger allowed – Member treated as belonging to the party he merged with.

Facts of the Case

Shri M. Vincent, a lone member of AIADMK-I in his letter dated 9 April 1990, addressed to the Chairman, Rajya Sabha, stated that as all factions of AIADMK had merged together into one unified party, namely, AIADMK led by Selvi Jayalalitha, he resolved to merge in the unified AIADMK. Shri G. Swaminathan, Leader of AIADMK-II Group in the Rajya Sabha, *vide* his letter dated 10 April 1990, addressed to the Chairman, Rajya Sabha, approved the merger of AIADMK-I with AIADMK-II. He also requested that as with this merger there was only one AIADMK Group in the Rajya Sabha, the AIADMK-II may be re-designated as AIADMK.

Decision of the Chairman

After considering the facts and circumstances of the case, it was found that AIADMK-I had only one member, namely, Shri M. Vincent and the request made by Shri M. Vincent for merger of AIADMK-I with AIADMK-II did not attract disqualification on ground of defection.

Accordingly the merger was allowed in terms of provisions of the paragraph 4 of the Tenth Schedule to the Constitution.

Yashwant Sinha Case (RS, 1990)

Claim for split in original party – Separate Group formed – Split taken cognizance of – Members of breakaway Group allotted separate seat for functional purpose.

Facts of the Case

Janata Dal had a strength of 39 members in Rajya Sabha in 1990.

In a communication dated 5 November 1990 addressed to the Chairman, Rajya Sabha, Shri Vishwanath Pratap Singh, Prime Minister and Leader of Janata Dal in Parliament intimated that Shri Yashwant Sinha, Shri Kamal Morarka, Shri Mohinder Singh Lather, Shri Anant Ram Jaiswal and Dr. Sanjay Singh, members, Rajya Sabha, belonging to the Janata Dal in Parliament had been expelled from the primary membership of the Party for anti-party activities with immediate effect and were no longer members of the Janata Dal in Parliament. On receipt of the letter, the aforesaid members were requested to send their comments in the matter.

On 9 November 1990 *vide* their letter, addressed to Chairman, Rajya Sabha, Shri Yashwant Sinha and 14 other members of Rajya Sabha stated that they belonged to the Janata Dal Party before 5 November 1990 and that due to a split in the Janata Dal at all levels in every State, they along with some members of Lok Sabha at a meeting held on 5 November 1990, at No. 1, Willingdon Crescent, New Delhi, elected Shri Chandra Shekhar, MP, as their Leader. Furthermore, they stated that they had constituted a distinct group namely, Janata Dal (Socialist) with Shri Yashwant Sinha, as its Leader in Rajya Sabha.

Decision of the Chairman

The matter was examined in the light of provisions of para 3 of the Tenth Schedule. It was seen that out of the 39 members of the Janata Dal in the Rajya Sabha, 15 had broken away from the Party. As there was a valid split, the members claiming split did not come within the rigours of para 3 of the Tenth Schedule. Relevant papers/documents in the matter were also obtained from Shri Sinha which included the constitution of the Janata Dal (Socialist); Rules framed thereunder, constitution of the Janata Dal (Socialist) in Parliament, duly filled forms I and III from each of the 15 members and minutes of the meeting of the breakaway

Group held on 5 November 1990. After taking into account the facts and circumstances of the case, the Chairman, Rajya Sabha, Shri Shanker Dayal Sharma took cognizance of split in Janata Dal and recognized the two factions *i.e.* Janata Dal led by Shri M.S. Gurupadaswamy and Janata Dal (Socialist) led by Shri Yashwant Sinha for functional purposes of the House.

Consequently, the Janata Dal (Socialist) came into being on 12 December 1990.

Kerala Congress Merger Case (RS, 1991)

Claim of merger by lone member party – Party being merged with confirmed merger – Merger allowed – Member treated accordingly.

Facts of the Case

Shri Thomas Kuthiravattom, member, Rajya Sabha, *Vide* his communication dated 19 February 1991, addressed to the Chairman, Rajya Sabha, stated that a section of the office bearers and delegates of the Kerala Congress from all over the State at its session held on 16 February 1991, at Pathanamthitta in Kerala, had unanimously resolved that they would join the Janata Dal (S) [Janata Dal (Samajwadi)] Party in view of the objectives enumerated by that Party's National Convention held at Ballia. He also stated that in view of the foregoing, he as lone member of the Kerala Congress in the Rajya Sabha had decided to merge the Kerala Congress Legislature Party with the Janata Dal (S) Legislature Party. He, therefore, requested the Chairman, Rajya Sabha, to accept the merger and give effect to the same in all relevant records. He also enclosed a copy of the resolution adopted at the session held on 16 February 1991 and a duly filled in Form-III.

In another communication dated 27 February 1991, addressed to the Chairman, Rajya Sabha, Shri Yashwant Sinha, Leader, Janata Dal (S), referring to the above mentioned communication of Shri Thomas Kuthiravattom, stated that the Janata Dal (S) Parliamentary Party, at its meeting held on the 20 February 1991, had approved the merger of the Kerala Congress led by Shri Thomas Kuthiravattom in the Janata Dal (S) and had admitted him to the Janata Dal (S) Party. He requested the Chairman to do the needful in the matter by showing Shri Kuthiravattom as member of their party in records. He also enclosed a copy each of the resolution adopted by the Parliamentary Party accepting the merger and duly filled in Form-I as required under the Member of Rajya Sabha (Disqualification on ground of Defection) Rules, 1985.

Decision of the Chairman

After considering the facts and circumstances of the case, it was found that the claim of merger by Shri Kuthiravattom was valid since it satisfied the conditions stipulated in paragraph 4 of the Tenth Schedule to the Constitution. The Chairman, Rajya Sabha, therefore, approved the merger on 4 March 1991.

Asom Gana Parishad Split Case (RS, 1991)

Claim for split in original party: Asom Gana Parishad - Splitaway Group formed new party: Natun Asom Gana Parishad - Split taken cognizance of - Members of splitaway Group allotted separate seats.

Facts of the Case

The strength of Asom Gana Parishad in Rajya Sabha was four in 1991.

Smt. Bijoya Chakravarty, member, Rajya Sabha in a letter dated 12 June, 1991 addressed to the Chairman, Rajya Sabha intimated about split in the Asom Gana Parishad and formation of the 'Natun Asom Gana Parishad' (NAGP) by her along with Shri David Ledger. The member requested that split in AGP and the splitaway Group be recognised. She had also stated that in the Lok Sabha and Assam Legislative Assembly Elections, the Election Commission of India had recognised their party and had allotted a new symbol 'Two Leaves'. She further stated that she was the Leader and Shri Ledger was the Deputy Leader of the new Party in Rajya Sabha. She, therefore, also requested for allotment of separate seats to them in the House.

Decision of the Chairman

The matter was examined in the light of provisions of para 3 of the Tenth Schedule to the Constitution. Since out of four members of AGP, two had claimed split, they did not come within the rigours of disqualification under the provisions of the Tenth Schedule to the Constitution.

After taking into account, the facts and circumstances of the case, the Chairman, Rajya Sabha, Shri Shanker Dayal Sharma took cognizance of the split in the party and recognised the new faction as "Natun Asom Gana Parishad" (NAGP) which came into existence from 28 June 1991.

Shiv Sena (Chhagan Bhujbal Group) Merger Case (RS, 1992)

Claim of merger of a Group emerging from a split - Party being merged with confirmed merger - Merger allowed - Member treated accordingly.

Facts of the Case

Kumari Chandrika Premji Kenia, member, Rajya Sabha, in a communication dated 22 February 1992, addressed to the Chairman, Rajya Sabha, stated that after a split in the Shiv Sena at the national level, a new group, namely, the Shiv Sena (Chhagan Bhujbal Group) had emerged and thereafter this group merged itself with the Congress (I) Party. She, therefore, desired to leave the Shiv Sena in the wake of the national split and join Congress (I).

Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs and Deputy Chief Whip, Congress (I) Party, in a separate communication addressed to the Chairman, Rajya Sabha, intimated that Kumari Kenia had joined the Congress (I) Party. Shri Jacob further requested to allot a seat to her alongwith the members of the Congress (I) in the House.

Decision of the Chairman

Kumari Kenia was the lone member of the Shiv Sena in the Rajya Sabha. After considering the facts and circumstances of the case, it was found that her request for joining the Shiv Sena (Chhagan Bhujbal Group) and merging with the Congress (I) fulfilled the requirements of paragraph 4 of Tenth Schedule to the Constitution. The Chairman, Rajya Sabha, therefore, accepted the merger of the Shiv Sena (Chhagan Bhujbal Group) with the Congress (I) on 25 February 1992.

Natun Asom Gana Parishad (NAGP) Merger Case (RS, 1992)

Claim of merger by lone member of party which emerged due to earlier split – Merger allowed – Member treated accordingly.

Facts of the Case

Shri David Ledger, member, Rajya Sabha, in a communication dated 28 July 1992, addressed to the Chairman, Rajya Sabha, stated that he was elected to the Rajya Sabha as an Asom Gana Parishad (AGP) candidate in 1989. However, as a result of split in the AGP in 1989, a new political party, namely, Natun Asom Gana Parishad (NAGP) was formed and it became his Legislature Party as well as that of Smt. Bijoya Chakravarty. Consequent upon the retirement of Smt. Bijoya Chakravarty, he became the lone representative of the NAGP Party in the Rajya Sabha. He also stated that in terms of paragraph 4(2) of the Tenth Schedule, as the lone member of the NAGP Party, he had decided to merge with the Congress (I). He also enclosed a copy of the resolution containing the decision of the NAGP to merge with the Congress (I). He, therefore, requested the Chairman, Rajya Sabha, to recognize the merger and allot him a seat along with the members of the Congress (I) in the House.

In another communication dated 28 July 1992, addressed to the Chairman, Rajya Sabha, Shri Sushilkumar Sambhajhirao Shinde, General Secretary, All India Congress Committee (I) stated that after the merger of NAGP with the Congress (I), Shri David Ledger had become a member of the Indian National Congress.

Decision of the Chairman

After considering facts and circumstances of the case it was found that the case of merger of NAGP with the Congress (I) fulfilled the requirements of paragraph 4 of the Tenth Schedule to the Constitution. The Deputy Chairman, Rajya Sabha accordingly accepted the merger on 28 July 1992.

Janata Party Split Case (RS, 1992)

Split in original party - Split taken cognizance of - Splitaway member formed a new group - Group recognised - Member allotted separate seat.

Facts of the Case

Janata Party had two members in Rajya Sabha in 1992.

In a communication dated 29 September 1992, addressed to the Chairman, Rajya Sabha, Shri Ram Gopal Yadav, member, Rajya Sabha, stated that a split had taken place in the Janata Party and as a result thereof separate Legislature Party namely, the Samajwadi Party had been formed. He requested that he might be recognized as the member of the Samajwadi Party and allotted a separate seat in the House. Shri Yadav also submitted a copy of the resolution of the new Legislature party.

Decision of the Chairman

The matter was examined in the light of the provisions of para 3 of the Tenth Schedule to the Constitution. As one out of the two members of the Janata Party had claimed a split, the member claiming the split did not come within the rigours of the disqualification provisions of the Tenth Schedule to the Constitution.

Keeping in view the facts and circumstances of the case, the Chairman, Rajya Sabha, Shri K.R. Narayanan, took cognizance of the split in the party and recognized the new faction as Samajwadi Party on 16 November 1992.

Janata Dal (Samajwadi) Split Case (RS, 1994)

Claim for split in original party - Splitaway Group formed a new party – Split taken cognizance of - New party recognised.

Facts of the Case

Janata Dal (S) had a strength of eight members in Rajya Sabha in 1994.

In a communication dated 3 April 1994, addressed to the Chairman, Rajya Sabha, Shri Ashok Kumar Sen, Dr. Sanjay Singh and Shri Basant Kumar Das, members, Rajya Sabha stated that there was a split in the Janata Dal (Samajwadi) Party and as a result they had formed a separate Legislature Party namely, the Rashtriya Janata Dal. It was further stated that Shri Ashok Kumar Sen had been unanimously elected as the Leader of the Rashtriya Janata Dal Parliamentary Party. The members requested that they might be recognized as a separate party in the Rajya Sabha.

Decision of the Chairman

The case was examined in the light of the provisions of para 3 of the Tenth Schedule to the Constitution. It was seen that the strength of Janata Dal (S) at the time of claiming of split was eight, of which a faction of three members had arisen which was more than one-third of the total members. The split in the party, therefore, did not attract the provisions of disqualification on ground of defection. Form I and III as required under the provisions of the Act and Rules of the Rashtriya Janata Dal and Rules of the Rashtriya Janata Dal in Parliament were obtained from the aforesaid members.

After taking into account facts and circumstances of the case, the Chairman, Rajya Sabha, Shri K.R. Narayanan took cognizance of the split in the party and recognised the new faction as the Rashtriya Janata Dal (R.J.D.) on 5 May 1994.

Telugu Desam Party Split Case (RS, 1994)

Claim for split in original party – Separate party formed – Denying that any such split had taken place the party expelled the member for indiscipline – Split taken cognizance of – Parties re-designated for functional purposes – Decision of the Chairman challenged in the High Court of Andhra Pradesh – No merit – Petition dismissed.

Facts of the Case

Telugu Desam Party had strength of three members in Rajya Sabha in June 1994.

On 26 June 1994, in a communication addressed to the Chairman, Rajya Sabha, Smt. Renuka Chowdhury, member, stated that in a meeting of the Party office bearers and workers held on that day, it was resolved to remove Shri. N.T. Rama Rao from the presidentship as well as from the primary membership of the Telugu Desam Party. Smt. Chowdhury further stated that she had been unanimously elected President of Telugu Desam Party. She, therefore, requested to treat her Party as real Telugu Desam Party by allotting separate seat in the House. In another communication addressed to the Chairman, Rajya Sabha, Shri Yerra Narayanaswamy, member, stated that Smt. Renuka Chowdhury had been expelled from the Telugu Desam Party *w.e.f.* 26 June 1994 for violating party discipline. He enclosed a letter in this regard from Shri. N.T. Rama Rao, President, Telugu Desam Party, addressed to the Chairman, Rajya Sabha. A copy of the letter received from Shri Yerra Narayanaswamy was forwarded to Smt. Renuka Chowdhury for her comments. Similarly, a copy of the letter received from her was forwarded to Shri Yerra Narayanaswamy for his comments.

Meanwhile, Smt. Renuka Chowdhury addressed a letter to the Chairman, Rajya Sabha in the matter. Smt. Chowdhury while enclosing a copy of her letter addressed to Shri. N.T. Rama Rao together with a clipping of the Indian Express reporting about her expulsion from the Party, contested the expulsion on the ground that proper procedure had not been followed and no notice was issued to her, etc., as contemplated in the constitution of the Party. She maintained that she continued to be a member of the Telugu Desam Party. The newspaper clipping *inter alia* stated that Smt. Renuka Chowdhury was contemplating moving the Court to contest

the party decision to expel her. Smt. Chowdhury by her another letter dated 15 July 1994 addressed to the Secretary-General, Rajya Sabha responded to the letters of Shri Yerra Narayanaswamy and Shri N.T. Rama Rao forwarded to her earlier by the Rajya Sabha Secretariat for her comments. In the said letter, she contended that the letters of Shri. Narayanaswamy and Shri N.T. Rama Rao were "apparently after thoughts and not relevant". Thereafter, pursuant to a request made, Smt. Renuka Chowdhury also submitted (i) a copy of the resolution pertaining to split in the Telugu Desam Party; (ii) Rules and Regulations of her Legislature Party; (iii) List of office bearers of her new party. Offering his comments on Smt. Chowdhury's letter of 26 June 1994, Shri. N.T. Rama Rao, *vide* his letter dated 19 July 1994 stated that Smt. Chowdhury had incurred disqualification under the provisions of Tenth Schedule to the Constitution and as such she should be disqualified as per the law.

Decision of the Chairman

The case was processed in the light of provisions of para 3 of the Tenth Schedule to the Constitution. It was found that a split had actually taken place in the Telugu Desam Party which at that time consisted of three members.

After taking into consideration the facts and circumstances of the case, the Chairman, Rajya Sabha, Shri K.R. Narayanan decided that the faction headed by Smt. Renuka Chowdhury be designated as the Telugu Desam Party II and the other faction comprising two members be redesignated as the Telugu Desam Party-I for the limited purpose of their functioning in the House. Telugu Desam Party-I and Telugu Desam Party -II came into existence on 5 August 1994.

Subsequent Developments

The decision of the Chairman, Rajya Sabha, was challenged by Shri Alladi P. Rajkumar in the High Court of Judicature of Andhra Pradesh through a writ petition wherein the Chairman, Rajya Sabha, and the Secretary General, Rajya Sabha, were made respondents. The Court did not see any merit in the case and, therefore, dismissed the petition.

Telugu Desam Party-I Merger Case (RS, 1996)

Claim of merger – Confirmed by party being merged with – Merger allowed – Member treated accordingly.

Facts of the Case

Two different communications, both dated 23 May 1996, were addressed to the Chairman, Rajya Sabha, by two members. The first one was from Smt. Renuka Chowdhury, member, Rajya Sabha, wherein she stated that her group, Telugu Desam Party -II had merged with Telugu Desam (Naidu) Group. The second communication was from Shri B.B. Ramaiah, member, Lok Sabha and leader, Telugu Desam (Naidu) Parliamentary Party, wherein he intimated that his Party had accepted the merger of Telugu Desam -II with Telugu Desam (Naidu) Party.

Decision of the Chairman

Smt. Renuka Chowdhury was the lone member of Telugu Desam - II in the Rajya Sabha. On examination of matter, it was found that the case of merger of the two parties fulfilled the requirements of paragraph 4 of the Tenth Schedule to the Constitution. The Chairman, Rajya Sabha, Shri K.R. Narayanan, therefore, accepted the merger on 23 May 1996.

Telugu Desam Party-II Merger Case (RS, 1996)

Claim of merger – Confirmed by party being merged with – Merger allowed – Member treated accordingly.

Facts of the Case

In a communication dated 10 July 1996, addressed to the Chairman, Rajya Sabha, Shri Yerra Narayanaswamy, member, stated that his Group, Telugu Desam–I had merged with the Telugu Desam (Naidu) Group on 6 July 1996.

In another communication, dated 10 July 1996, addressed to the Chairman, Rajya Sabha, Shri Chandrababu Naidu, President of the Telugu Desam Party, stated that Shri Narayanaswamy had joined the Telugu Desam (Naidu) Group on 6 July 1996.

Decision of the Chairman

Shri Yerra Narayanaswamy was the lone member of the Telugu Desam-I Legislature Party as defined in para 1(b) of the Tenth Schedule to the Constitution. On examination of the matter, it was found that the case of the merger of Telugu Desam-I with Telugu Desam (Naidu) Group fulfilled the requirements of paragraph 4 of the Tenth Schedule. The Chairman, Rajya Sabha, Shri K.R. Narayanan, therefore, accepted the merger on 15 July 1996.

AIADMK Split Case (RS, 1997)

Claim for split in original party – Separate party formed – Split taken cognizance of – Two factions of party re-designated for functional purpose.

Facts of the Case

In May, 1997, AIADMK had a strength of 14 members in Rajya Sabha.

In a communication dated 22 May 1997 addressed to the Chairman, Rajya Sabha, *Sarvashri* V. Rajan Chellapa, S. Austin, N. Thangaraj Pandian, N. Rajendran, T.M. Venkatachallam, P. Soundararajan and Dr. D. Masthan, members, Rajya Sabha, intimated about the election of Shri S. Thirunavukkarasu, MLA and Leader of the AIADMK Legislature Party in the Tamil Nadu Legislative Assembly as their leader and requested that they might be recognised as the real AIADMK Party in the Rajya Sabha. In another communication dated 25 May 1997, the aforesaid members also intimated that at a meeting held on that day, (25 May 1997), Shri V. Rajan Chellapa and Shri T.M. Venkatachellam had been elected as Leader and Deputy Leader of the Party in the Rajya Sabha.

Decision of the Chairman

The case was examined in the light of provisions of para 3 of the Tenth Schedule to the Constitution. It was found that a split had taken place in the AIADMK Party. After taking into account facts and circumstances of the case, the Chairman, Rajya Sabha, Shri K.R. Narayanan, on 6 June, 1997 took cognizance of the split in the AIADMK Party in Rajya Sabha. Accordingly, for the limited purpose of functioning in Rajya Sabha, the AIADMK led by Shri G. Swaminathan was designated as AIADMK-I and the Group led by Shri V. Rajan Chellapa was designated as AIADMK-II.

Janata Dal Split Case (RS, 1997)

Claim for split in original party – Breakaway Group formed new party – Split taken cognizance of – Members of new party allotted seats in separate bloc strictly for functional purposes.

Facts of the Case

In July 1997, the Janata Dal in the Rajya Sabha had 13 members.

On 5 July 1997, in a communication, addressed to the Chairman, Rajya Sabha, *Sarvashri* Som Pal, Ram Deo Bhandari, Nagmani, Jagdambi Mandal, Naresh Yadav, Prem Chand Gupta, Ranjan Prasad Yadav and Anil Kumar, members, Rajya Sabha, stated that consequent upon a split in the Janata Dal, they had decided to breakaway from the Janata Dal and sit as a distinct political Group, namely, Rashtriya Janata Dal (RJD), in the Rajya Sabha. They also made a request for allocation of separate seats to them in the House and provision of other facilities to enable them to function as a political party in the House. On being requested, they furnished duly signed Form-I and Form-II and a copy of the constitution and the Rules of the RJD and a list of its office bearers in the Rajya Sabha.

Decision of the Deputy Chairman

The case was examined in the light of the provisions of para 3 of the Tenth Schedule to the Constitution. It was found that a split had taken place in Janata Dal. The breakaway faction had designated itself as the 'Rashtriya Janata Dal'. After taking into account the facts and circumstances of the case, the Deputy Chairman, Rajya Sabha, acting as Chairman, Rajya Sabha, accorded recognition to it on 12 August 1997 and the eight members listed in Form-I submitted by Shri Som Pal were shown as members of the RJD and allotted a separate bloc of seats in the House strictly for the limited purpose of functioning.

AIADMK-II Split Case (RS, 1997)

Claim for split in original party – Breakaway Group formed separate party – Split taken cognizance of – Breakaway Group redesignated for functional purposes.

Facts of the Case

In December 1997, AIADMK-II had five members in the Rajya Sabha. In a communication dated 26 December 1997 addressed, to the Chairman, Rajya Sabha, *Sarvashri* P. Soundararajan and N. Thangaraj Pandian, members, Rajya Sabha stated that they had resolved to function as a separate group in the name of AIADMK from 26 December 1997 and requested that they might be recognised as AIADMK. They also enclosed a copy of the resolution about the formation of a separate Group and nomination of Shri N. Thangaraj Pandian and Shri P. Soundararajan as Leader and Secretary of the Party, respectively.

Decision of the Chairman

The case was examined in the light of the provisions of para 3 of the Tenth Schedule to the Constitution. It was found that a split had taken place in AIADMK Party-II. The Chairman, Rajya Sabha, Shri Krishan Kant, recognized the new faction as AIADMK-III, on 15 January 1998 for the limited purposes of functioning in the House.

Telugu Desam Party-I Merger Case (RS, 1998)

Claim of merger – Confirmed by party being merged with – Merger allowed – Member treated accordingly.

Fact of the Case

In a communication dated 28 January 1998, addressed to the Chairman, Rajya Sabha, Dr. D. Venkateshwar Rao, member belonging to Telugu Desam-I Party in the Rajya Sabha stated that his party had merged with the BJP and, therefore, he might be treated as a member of that party. He also enclosed a copy of the resolution adopted at the meeting of his Party endorsing merger of the Telugu Desam-I with the BJP.

In another communication, addressed to the Chairman, Rajya Sabha, Prof. Vijay Kumar Malhotra, member and Chief Whip of the BJP Parliamentary Party in the Rajya Sabha stated that the Telugu Desam-I had merged with the BJP and accordingly Dr. D. Venkateshwar Rao, member of the Group, might be treated as a member of the BJP in the Rajya Sabha and allotted a seat in the BJP bloc of seats in the House. Prof. Malhotra was then requested to get a letter from the Leader of the Party (Leader of the House) accepting the merger.

Subsequently, Shri Sikander Bakht, Minister of Industry and Leader of the House, in a communication addressed to the Chairman, Rajya Sabha, stated that the BJP Parliamentary Party had accepted the merger of Telugu Desam-I Party in the Rajya Sabha with the BJP Legislature Party.

Decision of the Chairman

After considering the facts and circumstances of the case, it was found that merger of Telugu Desam-I Party with the BJP Legislative Party fulfilled the requirements of paragraph 4 of the Tenth Schedule to the Constitution. The Chairman, Rajya Sabha, therefore, accepted the merger on 17 July 1998.

AIADMK Case (RS, 1998)

Claim for split in original party – Breakaway Group formed new party – Split taken cognizance of – Factions redesignated for functional purposes.

Facts of the Case

AIADMK had a strength of 11 members in the Rajya Sabha in 1998.

Shri G. Swaminathan, member, Rajya Sabha in a communication dated 24 February 1998, addressed to the Chairman, Rajya Sabha stated that there had been a split in the AIADMK Party and that consequently Km. Jayalalitha Jayaram, Shri M. Kadharsha, Shri V. Ramanathan, Shri R.T. Gopalan and he himself had formed a separate Group. He also stated that he had been elected as leader of that Group. All the aforesaid members except Km. Jayalalitha Jayaram had appended their signatures to the communication. Km. Jayalalitha in a separate communication addressed to the Chairman, Rajya Sabha, while reiterating the submissions made in the aforesaid communication, stated that G. Swaminathan, member, Rajya Sabha, had been elected Leader of their Group.

Decision of the Chairman

The matter was examined in the light of provisions of para 3 of the Tenth Schedule. As five out of 11 members of AIADMK Legislature Party had formed a separate Group in Rajya Sabha, they did not attract disqualification under the Tenth Schedule to the Constitution, as the Group constituted more than one-third of the total number of members of the AIADMK Legislature Party. After taking into account the facts and circumstances of the case, the Chairman, Rajya Sabha, Shri Krishan Kant took cognizance of the split in the Party and re-designated the two factions as AIADMK-I and AIADMK-II for functional purposes. Consequently AIADMK-II came into existence from 29 February 1998.

Consequential Action

Accordingly Shri Alladi Aruna *alias* V. Arunachalam, member and Leader of the AIADMK-I and Shri G. Swaminathan, member and Leader of the AIADMK-II were informed about the re-designation of the AIADMK Party in Rajya Sabha.

Janata Dal Split Case-II (RS, 1998)

Claim for split in original party – Breakaway group formed new party – Split taken cognizance of – Members of new party allotted separate seats.

Facts of the Case

The Janata Dal had thirteen members in Rajya Sabha in 1998. In a communication dated 17 March 1998, addressed to the Chairman, Rajya Sabha, *Sarvashri* Dilip Ray, Rahas Bihari Barik, Narendra Pradhan, Bhagaban Majhi and Smt. Ila Panda, members, Rajya Sabha stated that they had decided to split away from the Janata Dal as they did not agree with certain policies and programmes followed by the leadership of the Janata Dal and had accordingly formed a separate Group known as the 'Biju Janata Dal' consisting of five members under the leadership of Shri Dilip Ray. They further stated that the new Group constituted more than one-third of the total strength of the Janata Dal in the Rajya Sabha and accordingly made a request for allotment of separate seats for them in the House. They also forwarded a copy of the resolution regarding formation of the new group in Rajya Sabha.

Decision of the Chairman

The case was examined in the light of provisions of para 3 of the Tenth Schedule to the Constitution. It was found that a split had taken place in the Janata Dal. After taking into account the facts and circumstances of the case, the Chairman, Rajya Sabha, Shri Krishan Kant recognized the new faction as the 'Biju Janata Dal' on 20 March 1998 for the limited purposes of the functioning in the House.

AIADMK-III Merger Case (RS, 1998)

Claim of merger – Confirmed by party being merged with – Merger allowed – Member treated accordingly.

Facts of the Case

In a communication dated 6 July 1998, addressed to the Chairman, Rajya Sabha, Shri R. Margabandu of AIADMK-I and Shri P. Soundararajan, the lone member of AIADMK-III stated that AIADMK-III had resolved to merge with AIADMK-I and that AIADMK-I had also accepted the merger of AIADMK-III with it in the Rajya Sabha. They also enclosed copies of the resolutions accepting the merger of AIADMK-I and AIADMK-III in the Rajya Sabha.

Decision of the Chairman

On examination of the matter, it was found that the case of merger of AIADMK-III with AIADMK-I fulfilled the requirements of paragraph 4 of the Tenth Schedule to the Constitution. The Chairman, Rajya Sabha, accordingly, accepted the merger on 8 July 1998.

Maharashtra Vikas Aghadi Merger Case (RS, 1999)

Claim of merger – Confirmed by party being merged with – Merger allowed – Member treated accordingly.

Facts of the Case

In a communication dated 29 July 1999, addressed to the Chairman, Rajya Sabha, Shri Suresh Kalmadi, member, Rajya Sabha, stated that his Party, Maharashtra Vikas Aghadi had merged with the Indian National Congress (INC) on 1 June 1999. He further stated that the resolution of merger was unanimously approved and adopted by the General Body of the Maharashtra Vikas Aghadi at its meeting held on 1 June 1999 at Pune. He also enclosed a copy each of (i) letter addressed to the Chief Election Commissioner requesting for deletion of the Maharashtra Vikas Aghadi from the list of recognized political parties; (ii) letter from Dr. Manmohan Singh, Leader of the Opposition in the Rajya Sabha to the Chairman, Rajya Sabha, informing about the merger of the Maharashtra Vikas Aghadi with the INC; and (iii) resolution dated 1 June 1999 regarding merger of the Maharashtra Vikas Aghadi with the INC.

Decision of the Chairman

After considering the facts and circumstances of the case, it was found that the merger of the Maharashtra Vikas Aghadi with the INC fulfilled the requirements of paragraph 4 of the Tenth Schedule to the Constitution. The Chairman, Rajya Sabha, accordingly accepted the merger on 3 August 1999.

Jharkhand Mukti Morcha Merger Case (RS, 2001)

Claim for split in original party – Lone member made claim of merger with another party – Confirmed by party being merged with – Merger allowed – Member treated accordingly.

Facts of the Case

In a communication dated 23 October 2001, addressed to the Chairman, Rajya Sabha, Shri R.K. Anand, member, belonging to the Jharkhand Mukti Morcha (JMM) stated that he was the lone member of the JMM Party in the Rajya Sabha and there had been a split in the JMM and the Legislature Party as well. After the split, he along with the Legislature Party had merged with the Indian National Congress (INC) in the Rajya Sabha and, accordingly, he might be treated as a member of the INC.

In another communication dated 31 October 2001, addressed to the Chairman, Rajya Sabha, Shri Anand enclosed a copy of the resolution regarding merger of the JMM Parliamentary Party with the INC adopted at the meeting of the JMM Parliamentary Party held on 23 October 2001.

In another communication dated 5 November 2001, addressed to the Chairman, Rajya Sabha, Dr. Manmohan Singh, Leader of the Opposition and Leader of the INC in the Rajya Sabha stated that the INC had approved the merger of the JMM into the INC in the Parliament with immediate effect. He further requested to allot Shri Anand a seat in the Congress Bloc of seats in the House.

Decision of the Chairman

After taking into consideration the facts and circumstances of the case, it was found that the merger fulfilled the requirements of the paragraph 4 of the Tenth Schedule to the Constitution. Hence the Chairman, Rajya Sabha, accepted the merger on 15 November 2001.

STATE LEGISLATURES

Andhra Pradesh

C. Ramachandra Reddy Case (APLA, 1987)

Independent member allegedly joined Indian National Congress-I – Petition praying for disqualification filed – Allowed – Writ petition challenging the proceedings initiated by the Speaker filed in High Court – Court gave no direction – Hence the Speaker held the member disqualified – Writ petition filed in High Court – Order of the Speaker stayed for being without jurisdiction – Subsequently the matter dismissed.

Facts of the Case

During the Eighth Legislative Assembly, Shri K.V. Narayana Rao, MLA, filed a petition under Rule 6 (2) of the Members of Andhra Pradesh Legislative Assembly (Disqualification on ground of Defection)Rules, 1986 against Shri C. Ramachandra Reddy, who was elected to the Legislative Assembly as an independent member from Adilabad Constituency, praying for his disqualification in terms of para 2 (2) of the Tenth Schedule to the Constitution for having joined a political party, Indian National Congress (I).

The petitioner in support of his contention, made the following submissions:–

(i) The respondent contested the Zilla Praja Parishad (local self-government body) election held on 11 March 1987 after obtaining the Congress Party ticket;

(ii) The respondent had filed his nomination papers before the Returning Officer-cum-District Collector, Adilabad with a declaration that he was contesting the election on behalf of the Indian National Congress (I) Party and requested for allotment of the symbol 'Hand' to him.This was backed up by a letter purported to have been issued on behalf of the Andhra Pradesh Congress Committee (I) [APCC(I)] informing the said Returning Officer that the respondent was their candidate and requesting him to allot the symbol 'Hand' to their candidate;

(iii) He was subsequently allotted the symbol 'Hand';

(iv) During the election campaign the respondent got printed and distributed

pamphlets, banners, door posters in the district of Adilabad making everybody know that he was the Congress (I) candidate for the Zilla Praja Parishad election. He also appealed to the voters to support him as the Congress candidate.

The petitioner finally contended that the above actions of the respondent had proved that he, in spite of being an Independent member of the Assembly, joined the Congress (I) Party and contested the election after obtaining the Congress Party ticket.

After ascertaining that the petition was in order, a notice was issued to the respondent to offer his comments.

The respondent furnished his comments on 10 April 1987, wherein he denied the averments made by the petitioner. The main points of his submissions were that he had neither become a primary or active member of the Indian National Congress (I), nor had he ever applied to the APCC(I) for being their candidate; and that he had accepted the offer of the local Congress (I) leader to contest on their symbol with the sole object to give a united fight to the candidate supported by the Telugu Desam Party.

On 4 May 1987, the Speaker, Andhra Pradesh Legislative Assembly, Shri G. Narayan Rao, heard the petitioner, the respondent, the District Collector and Returning Officer for election to the Zilla Praja Parishad, Adilabad and the District Congress Committee President. The petitioner also produced documentary evidence in support of his contentions. Both the parties were permitted to cross examine the witnesses.

The issue for determination before the Speaker was: whether Shri C. Ramachandra Reddy, an Independent MLA had incurred disqualification on account of joining a political party, namely, the Indian National Congress and had contested the Adilabad Zilla Praja Parishad election held on 11 March 1987 on the symbol 'Hand', which is the recognized election symbol of the Indian National Congress.

During the course of the enquiry the respondent filed a writ petition no. 26867/87 in the High Court of Andhra Pradesh challenging the validity of the proceedings initiated by the Speaker. Later, the counsel of the respondent filed a memo in the High Court praying for an order from the Court to the effect that the Speaker defer his decision till the disposal of the said writ petition.

Since there was no direction or communication from the High Court and in view of the importance of the issue involved and the constitutional obligation cast on him, the Speaker decided to proceed with the matter.

Decision of the Speaker

The Speaker in his order dated 7 May 1987 observed *inter alia* that it was a case where Shri C. Ramachandra Reddy "on his own showing nomination forms marked as Ex. C-1 to 4 and by way of a solemn declaration", entered the election as belonging to a political party, namely, the Indian National Congress and thus making use of the original political party symbol, influence, support and stability. To put it differently, it was not a case where an original political party supported the person in issue dehors its political affiliations. This situation ruled out the theory that the party in issue did not contest as a party candidate of the original political party. The documentary evidence filed in this case conclusively proved that Shri C. Ramachandra Reddy had joined a political party after being elected as an independent MLA.

Taking into consideration all facts and circumstances of this case, the Speaker ordered as follows:

> "In exercise of the powers conferred upon me under the paragraph 6 (1) of the Tenth Schedule to the Constitution of India, I ....hereby decide that Shri C. Ramachandra Reddy who was elected as Independent member of the Andhra Pradesh Legislative Assembly from Adilabad Constituency has become subject to disqualification under paragraph 2(2) of the Tenth Schedule for being a member of the Andhra Pradesh Legislative Assembly with immediate effect and I declare accordingly."

Consequential Action

The decision of the Speaker was published in the Andhra Pradesh Gazette (Extra), Part II on 7 May 1987.

Subsequent Developments

Shri Reddy filed a petition in the High Court of Andhra Pradesh challenging the order of the Speaker disqualifying him from the membership of the Andhra Pradesh Legislative Assembly. The Court, on 17 June 1987, stayed the order of the Speaker disqualifying Shri Reddy for being without jurisdiction. Thereafter, consequent upon the dissolution of the Eighth Andhra Pradesh Legislative Assembly and the constitution of the Ninth Assembly on 28 and 30 November 1989, respectively, the High Court on 8 October 1991 finally dismissed the petition.

Arunachal Pradesh

Indian National Congress Split Case (Arunachal Pradesh LA, 2003)

Claim of Split in the original party: Indian National Congress having 56 members – Formation of a separate group consisting of 38 members namely Congress (D) – Split taken cognizance of – Members treated as belonging to the new Group.

Facts of the Case

On 27 July 2003, 38 members belonging to the Indian National Congress which had a strength of 56 members in the House, claimed a split in the original party and formation of a separate and distinct Group namely Congress (D).

Decision of the Speaker

After taking into consideration the facts, circumstances and relevant provisions of the Tenth Schedule and the Rules, the Speaker, Shri Tamiyo Taga, decided that the said 38 members of the Indian National Congress Legislature Party in Arunachal Pradesh Legislative Assembly... whose number is not less than one-third of the members of Indian National Congress Legislature Party have splitaway from Indian National Congress Legislature Party in Arunachal Pradesh Assembly from 27 July 2003 and have constituted a separate and distinct Group, which has arisen as a result of split in the original political party, the Indian National Congress.

The Speaker held that this Group of 38 members shall be known as Congress(D) from the aforesaid date for the purpose of sub-paragraph (1) of paragraph (2) of the Tenth Schedule.

Congress (D) Merger Case (Arunachal Pradesh LA, 2003)

Claim of merger by 31 out of 38 members of Congress (D) Legislature Party with Bharatiya Janata Party (B.J.P.) – Merger recognised – Members treated as members belonging to B.J.P.

Facts of the Case

On 26 August 2003, 31 members belonging to Congress (D) Legislature Party, which had a strength of 38 members in the House, made a claim of merger with Bharatiya Janata Party.

Decision of the Speaker

After taking into consideration the facts, circumstances of the case and the relevant provisions of the Tenth Schedule and the Rules, the Speaker, Shri Setong Sena, decided that the said, 31 members of the Congress (D) Legislature Party in Arunachal Pradesh Legislative Assembly... have merged with Bharatiya Janata Party in the Arunachal Pradesh Legislative Assembly on 26 August 2003 and have become members of that political party. The Bharatiya Janata Party shall be deemed to be the political party to which they belong from the aforesaid date for the purpose of sub-paragraph (1) of paragraph (2) of the Tenth Schedule and be their original political party for the purpose of paragraph (4) of the Tenth Schedule.

Arunachal Congress Merger Case (Arunachal Pradesh LA, 2003)

Claim of merger by lone member of Arunachal Congress Legislature Party with Bharatiya Janata Party (B.J.P.) – Merger recognised – Member treated as belonging to B.J.P.

Facts of the Case

Shri Gegong Apang, the lone member belonging to the Arunachal Congress Legislature Party made a claim of merger with the Bharatiya Janata Party (B.J.P.) on 29 August 2003.

Decision of the Speaker

After taking into consideration the facts, circumstances of the case and the relevant provisions of the Tenth Schedule and the Rules, the Speaker, Shri Setong Sena, decided that Shri Gegong Apang, the lone member belonging to the Arunachal Congress Legislature Party in the Arunachal Pradesh Legislative Assembly, who by himself constitutes the entire Legislature Party, has merged with Bharatiya Janata Party in the Arunachal Pradesh on 29 August 2003 and has become member of that political party. The Bharatiya Janata Party shall be deemed to be the political party to which he belongs from the aforesaid date for purpose of sub-paragraph (1) of paragraph (2) of the Tenth Schedule and be his original political party for the purpose of paragraph (4) of the Tenth Schedule.

Congress (D) Merger Case II (Arunachal Pradesh LA, 2003)

Claim of merger by 5 members belonging to Congress (D) Legislature Party with Bharatiya Janata Party (B.J.P.) – Recognised – Members treated as belonging to B.J.P.

Facts of the Case

Out of seven members of Congress (D) Legislature Party in Arunachal Pradesh, five members namely, *Sarvashri* Rajesh Tacho, Kahfa Bengia, Tanga Byaling, Wangki Lowang and Tadic Chije made a claim of merger with the Bharatiya Janata Party on 14 November 2003.

Decision of the Speaker

After taking into consideration the facts, circumstances of the case and the relevant provisions of the Tenth Schedule and the Rules, the Speaker, Shri Setong Sena, decided that the said 'five members of the Congress (D) Legislature Party in Arunachal Pradesh Legislative Assembly ... have merged with the Bharatiya Janata Party in Arunachal Pradesh Assembly on 14 November 2003 and have become members that political party. The Bharatiya Janata Party shall be deemed to be the political Party to which they belong from the aforesaid date for the purpose of sub-paragraph (1) of paragraph (2) of the Tenth Schedule and be their original political party for the purpose of paragraph (4) of the Tenth Schedule.

Assam

Sahidul Alam Choudhury and Others Case (Assam LA, 1986)

Petition for disqualifications filed against 6 Independent members for having joined Asom Gana Parishad (AGP) – Speaker held : AGP was not a Political Party at the time when respondents joined it; provisions regarding disqualification, therefore, did not apply – Petition disallowed.

Facts of the Case

On 30 January 1986, Shri Santi Ranjan Dasgupta and 14 other MLAs belonging to the United Minorities Front (UMF) Party in the Assembly gave a petition to the Speaker praying for disqualification of six Independent MLAs* for having joined a political party, *i.e.* the Asom Gana Parishad (AGP).

It was averred in the petition that the respondents were elected to the Assembly as Independent candidates in the General Election held in December 1985. Later, however, they joined the AGP on different dates and thereby incurred disqualification under para 2(2) of the Tenth Schedule to the Constitution of India. The petitioners, prayed that the respondents be disqualified for being members of the Assam Legislative Assembly.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Pulakesh Barua, gave his decision dated 1 April 1986 under the Tenth Schedule in the matter. On examination of the records, the Speaker held that the AGP was officially registered by the Election Commission on 25 February 1986. The Speaker further observed that the respondents joined the AGP on different dates before the AGP was registered by the Election Commission as a political party. The issue, therefore, was whether the respondents were liable to be disqualified for joining the AGP, which was not a political party. Referring to the definition of 'political party'

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* *Sarvashri* Sahidul Alam Choudhury, Saraj-Ul-Haq Chaudhury, Joy Prakash Tewari, Khorsing Engti, Hariram Terang, Samsing Hanse.

given by the Law Commission and the Election Symbols (Reservation and Allotment) Order, 1968 (or the Symbols Order), the Speaker opined that a political party for the purpose of Election is a party, which is registered for the purpose of Election. This clearly established that when the respondents became members of the AGP, they did not join a political party in terms of para 2(2) of the Tenth Schedule as contended in the petition and accordingly they did not come under the rigours of the disqualification provisions. The Speaker, therefore, disallowed the petition.

Santi Ranjan Dasgupta and Others Case (Assam LA, 1990)

Split claimed in United Minorities Front (UMF) Legislature Party by 8 member – Splitaway Group formed new party by the name of UMF (Santi Ranjan Dasgupta) – Taken cognizance of – Subsequently the new Party claimed merger with INC – Petition for disqualification for having voluntarily giving up membership of UMF filed against claimants of mergers – Petitioner contended: though respondents' splitaway group was recognised by Speaker it was not registered by Election Commission; splitaway group, therefore, was not a political party; its merger with INC, therefore, attracted disqualification – Respondents contended: they belonged to a duly recognised splitaway group and their merger with INC was legal – Speaker held: since splitaway group was not a political party, respondents' act of joining INC attracted disqualification – Allowed – Respondents disqualified.

Facts of the Case

On 8 August 1990, Shri Abdul Jabbar, MLA gave a petition to the Speaker against Shri Santi Ranjan Dasgupta and seven other MLAs* praying for their disqualification under para 2(1)(a) of the Tenth Schedule to the Constitution for having voluntarily given up membership of their original party, i.e. the United Minorities Front (UMF) Party.

Prior to this, on 8 July 1990, the respondents gave a communication to the Speaker *inter alia* informing that their duly recognised splitaway Group, i.e. the UMF (Santi Ranjan Dasgupta) had merged with the Indian National Congress (INC).

The petitioner *inter alia* averred that the Speaker had taken cognizance of a split in the UMF Legislature Party *vide* his orders dated 4 December 1989 and 11 January 1990. Simultaneously, he recognised formation of a new Party in the name of the UMF (Santi Ranjan Dasgupta). But, the new Party was not registered by the Election Commission of India as a political party. It, therefore, was not technically empowered to merge with another party. The respondents' claim for

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* *Sarvashri* Ardhendu Kumar Dey, Afzalurahman, Maulana Abdul Jalil Ragibi, Sheikh Saman Ali, Yusuf Ali Ahmed, Gopi Nath Das and Abdul Husain Sarkar.

merger with the INC, therefore, attracted disqualification under the Tenth Schedule. They requested the Speaker to disqualify the respondents for being members of the Assembly.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Pulakesh Barua, gave his decision dated 10 October 1990 under the Tenth Schedule in the matter. Referring to the Election Symbols (Reservation and Allotment) Order, 1968 (or the Symbols Order), the Speaker opined that a political party for the purpose of election is the one, which is recognised by the Election Commission of India and therefore recognised for the purpose of election. In the case of the respondents, it was clear that their Group was not a political party enjoying powers to merge with another party. In the instant case, it could, therefore, not be claimed that a political party [*i.e.* the UMF (Santi Rajan Dasgupta)] had merged with another political party (*i.e.* the INC). The Speaker, therefore, held that the respondents incurred disqualification in terms of para 2(1)(a) of the Tenth Schedule to the Constitution. Accordingly, he allowed the petition and disqualified the respondents from the membership of the Assembly.

All India Indira Congress (Tiwari) Split Case (Assam LA, 1996)

Claim of split in All India Indira Congress (Tiwari) by 1 of total 2 MLAs – Claim for split found valid in terms of para 3 of the Tenth Schedule – Allowed –Split away Group merged with Asom Gana Parishad – Allowed in terms of Para 4 of Tenth Schedule – Member treated accordingly.

Facts of the Case

The All India Indira Congress (Tiwari) or the AIIC(T) had two members in the Assam Legislative Assembly. On 20 May 1996, Shri Ali Akbar Miah, MLA, addressed a communication to the Speaker intimating that as per a resolution passed in the AIIC(T) Assam Unit's General Meeting on 16 May 1996, a split had occurred in the Party. He further informed that consequent upon the split he had formed a new Group in the Assembly and subsequently the new Group had merged with the Asom Gana Parishad (AGP). Simultaneously, the President, AGP also sent a copy of his order admitting Shri Miah in the AGP Legislature Party.

In the light of the chain of events mentioned above, the Speaker had to decide whether the split in the AIIC(T) and subsequent merger of the splitaway Group with the AGP were protected under para 3 and para 4 respectively, of the Tenth Schedule to the Constitution of India.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Ganesh Kutum, gave his decision dated 14 June 1996 under the Tenth Schedule in the matter. As the splitaway group comprised of the requisite one-third of the undivided strength of the AIIC(T) Legislature Party, the Speaker took cognizance of the split and recognised formation of the splitaway Group in terms of para 3. Simultaneously, the Speaker allowed the subsequent merger of the splitaway group with the AGP in terms of para 4 of the Tenth Schedule.

All India Indira Congress (Tiwari) Merger Case (Assam LA, 1997)

Claim of merger by lone MLA of All India Indira Congress (Tiwari) [AIIC (T)] with Indian National Congress (INC) – Confirmed by party being merged with –Claim of merger found valid in terms of para 4 of Tenth Schedule – Allowed – Member treated accordingly.

Facts of the Case

The All India Indira Congress (Tiwari) or AIIC(T) had two MLAs in the Assam Legislative Assembly. Consequent upon recognition of the split in the AIIC(T) by the Speaker *vide* his order dated 14 June 1996, the strength of the AIIC(T) was reduced to one. Later, Shri Ismail Hussain, the lone member of the AIIC(T), addressed a communication to the Speaker intimating that his Party had merged with the INC. He also informed that the merger was approved in the General Meeting of the AIIC(T) in Barpeta by a resolution dated 31 December 1996. Shri Silvius Chondpan, the Leader of the INC Legislature Party also informed the Speaker about the merger and requested him to recognise the same.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Ganesh Kutum, gave his decision dated 19 March 1997 under the Tenth Schedule in the matter. After satisfying himself that the merger fulfilled requirements stipulated under para 4 of the Tenth Schedule, the Speaker recognised the merger.

Bihar

Raghvendra Pratap Singh Case (Bihar LA, 1997)

Disqualification sought for violation of party whip by a member of Janata Dal – Subsequent plea taken by petitioner that respondent also incurred disqualification by assuming office of a Minister in the RJD Government – Speaker held: in case of non-issue of whip voting at discretion did not invoke disqualification; assumption of the office of Minister not a ground for disqualification – There was a split in respondent's original party and respondent belonged to the Splitaway Group – Petition disallowed

Facts of the Case

On 30 July 1997, Shri Ganesh Prasad Yadav, MLA and the Leader of the Janata Dal Legislature Party, filed a petition before the Speaker against Shri Raghvendra Pratap Singh, MLA, praying for his disqualification for having violated the whip during the voting on a Motion of Confidence moved by the Government of Smt. Rabri Devi on 28 July 1997. It was averred in the petition that the respondent, set up as a candidate by the Janata Dal Party and elected as a member to the Assembly from the Barh constituency had by voting in favour of the Motion violated the whip and came under the provisions stipulated under para 2(1)(b) of the Tenth Schedule to the Constitution read with the Members of the Bihar Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, or Assembly Rules, 1986.

Having ascertained that the petition was in order, a notice was issued to the respondent directing him to submit his reply and also to appear before the Speaker for personal hearing.

During the course of the personal hearing, the respondent raised the preliminary objection that the petitioner had not submitted the information in Form II as prescribed under Rule 6 of the Rules, 1986. Besides, no such whip was issued to him. The petitioner, on the other hand, submitted that apart from violation of the whip, the respondent was performing duties as a Minister in the Government of Rashtriya Janata Dal. It was, therefore, clear that he was no more in the Janata Dal Legislature Party and that ground was sufficient to disqualify him.

On the basis of the facts and oral evidences presented in the course of hearings, the Speaker framed the following issues for consideration:

(i) Whether the petition submitted by Shri Yadav on 30 July 1997 was in the prescribed form as stipulated under the law?

(ii) Whether a whip was issued by the Janata Dal Legislature Party to vote against the Confidence Motion by the Rabri Devi Government and whether a copy of any such whip was made available to the respondent?

(iii) Whether the respondent could be disqualified on ground of voting in favour of the Confidence Motion despite the fact that no whip was issued?

(iv) Whether taking of oath and performance of duties as a Minister by the respondent was against the provisions stipulated in the Constitution of India or more specifically in the Tenth Schedule to the Constitution of India and whether his membership could be terminated on that ground?

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Dev Narayan Yadav, gave his decision dated 14 September 1998. As regards issue (i) above, the Speaker opined that since Form II is part of Rule 3 and not or Rule 6 of the Members of Bihar Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, the preliminary objection raised by the respondent was not tenable. Likewise, the Speaker also rejected other objections regarding non-compliance of requisite procedure in submission of the petition.

Considering the matter in the light of the relevant decisions rendered by the Supreme Court, the Speaker in regard to issue (ii), opined that the petitioner had failed to provide any evidence by which violation of para 2 (1)(b) of the Tenth Schedule to the Constitution of India could be proved. Besides, during the hearing, the petitioner himself conceded that no whip was issued prior to the voting on 28 July 1997 by his Party or by any other authorized person. Under these circumstances, the written statement and oral evidence given by the respondent were strong enough to conclude that neither the whip was issued nor the respondent violated any.

As regards issue (iii) the Speaker was of the opinion that no provision is enshrined in the Constitution of India or in the Tenth Schedule or in the Assembly Rules, 1986 which provide for disqualification of a member if he casts vote at his discretion in case of non-issue of whip. No disqualification had, therefore, been incurred by the respondent.

Insofar as point (iv) was concerned, the petitioner, during oral testimony before the Speaker stated that the respondent should be disqualified on ground of assumption of the office of Minister in the Government led by the Rashtriya Janata Dal. The respondent, however, argued that this ground should not even be considered, as the same was not mentioned in the petition dated 30 July 1997. He further contended that there is no provision in the Tenth Schedule for disqualification of a member on that ground. Considering the matter in the light of the relevant constitutional provisions, the Speaker opined that assumption of the office of a Minister in the cabinet and performance of the duties thereof, did not amount to disqualification of the respondent as there is no constitutional provision in this regard.

In his decision, the Speaker also referred to a vertical split in the Janata Dal Legislature Party. On 28 July 1997, out of the 29 members in the Janata Dal 13 members along with the respondent had formed a separate party under the name and style of the Janata Dal (Lokatantrik). As the Speaker recognized the split of more than one-third of the total membership of the original Party, the subsequent plea of the petitioner for disqualification of the respondent on the basis of voluntarily giving up of his membership was also rejected.

On the basis of conclusions drawn with regard to issues (i) to (iv), the Speaker dismissed the petition for disqualification of Shri Raghvendra Pratap Singh on the basis of defying the whip issued by his former Party.

Consequential Action

The Speaker directed the Secretary, Bihar Legislative Assembly, to forward the copies of his order to the petitioner, the respondent and others. The decision was also published in the Bihar Government Gazette.

Janata Dal (U) Split Case (Bihar LA, 2000)

Claim of split in Janata Dal (U) by 6 out of total 18 MLAs - Split away Group formed new party by the name of Jana Shakti Party - Found valid in terms of Para 3 of Tenth Schedule - Taken cognizance of - Members treated accordingly

Facts of the Case

In the Twelfth Bihar Legislative Assembly, the Janata Dal (U) Legislature Party had 18 members. Consequent upon a split in the Janata Dal (U) on 24 November 2000, a split away Group of 6 MLAs* led by Shri Ramsevak Hazari was constituted. Later, the splitaway Group requested the Speaker to recognize it as a separate party by the name of the Jana Shakti Party.

Decision of the Speaker

After consideration of circumstances and facts of the case, the Speaker, Shri Sadanand Singh, found the split valid in terms of para 3 of the Tenth Schedule and accordingly recognized the split and the formation of the new Party by the name of Jana Shakti Party.

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* *Sarvashri* Ramsevak Hazari, Pashupati Kumar Paras, Virender Kumar Singh, Ramanand Singh, Sushil Kumar Singh and Ramakishor Singh

Janata Dal (U) Split Case - II (Bihar LA, 2002)

Claim of split in Janata Dal (U) by 4 out of total 12 Members – Splitaway Group formed new Party by the name of Janata Dal (Jai Prakesh) – Taken Cognizance of in terms of para 3 of Tenth Schedule

Facts of the Case

The Janata Dal (U) had 12 MLAs, in the Twnafth Bihar Legislative Assembly. Four out of these 12 MLA, *viz. Sarvashree* Shashi Kumar Rai, Vishwanath Singh, Lakshmi Narain Prasad Yadav and Jainandan Prasad Yadav, intimated the Speaker that consequent upon a split in their original Party, they had formed a new Party by the name of the Janata Dal (Jai Prakash). Intimating that the new Party had appointed Shri Shashi Kumar Rai, MLA, as its Leader, they requested the Speaker to take cognizance of the split in the Legislative Assembly.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the Speaker, Shri Sadanand Singh, gave his decision in the matter on 29 July 2002 under the Tenth Schedule in the matter. As the claim for split was made by not less than one-third of the total membership of the original political party of the Janata Dal (U), the split was found valid under para 3 of the Tenth Schedule to the Constitution. Accordingly, the Speaker took cognizance of the split.

Bahujan Samaj Party Merger Case (Bihar LA, 2002)

Claim for merger made by lone member of Bahujan Samaj Party with Rashtriya Janata Dal – Confirmed by Party being merged with – Claim for merger valid in terms of para 4 of Tenth Schedule – Merger allowed – Member treated accordingly

Facts of the Case

Shri Suresh Pasi, the lone MLA belonging to the Bahujan Samaj Party (BSP), intimated the Speaker that his Party had merged with the Rashtriya Janata Dal (RJD). Smt. Rabri Devi, the Leader of the RJD also gave her consent to the merger. Shri Pasi requested the Speaker to recognise the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances, the Speaker, Shri Sadanand Singh, gave his decision dated 1 November 2002 under the Tenth Schedule in the matter. As Shri Pasi was the lone member of the BSP, the merger fulfilled requirements of para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

BSP (Splitaway Group) Merger Case (Bihar LA, 2002)

Claim for Merger by 4 of total 5 of splitaway group of BSP with RJD – Confirmed by Party being merged with – Found valid in terms of para 4 of Tenth Schedule – Members treated accordingly

Facts of the Case

The Bahujan Samaj Party (BSP) had five MLAs in the Twelfth Bihar Legislative Assembly. In June 2002, Four out of these five MLAs, *viz. Sarvashri* Mahabali Singh, Rajesh Singh, Chhedi Lal Ram and Zakir Hussain Khan caused a split in BSP and requested the Speaker to recognise merger of their Splitaway Group with the Rashtriya Janata Dal (RJD) Legislature Party. Later, the remaining one MLA also merged with RJD in November 2002. Smt. Rabri Devi, the Leader of the RJD Legislature Party also gave her consent to the merger.

Decision of the Speaker

After consideration of the facts and circumstances, the Speaker, Shri Sadanand Singh, gave his decision dated 25 June 2003 under the Tenth Schedule in the matter. As the claim for merger was found valid under para 4 of the Tenth Schedule, the Speaker allowed the merger.

Samata Party Merger Case (Bihar LA, 2003)

Claim of merger by 27 out of total 30 members of Samata Party with Janata Dal (U) - Found valid in terms of para 4 of Tenth Schedule - Recognized - Members treated accordingly

Facts of the Case

During the Twelfth Legislative Assembly, 27 MLAs* of the Samata Party intimated the Speaker that they had merged with the Janata Dal (U) Legislature Party as per decision taken in their National Executive Meeting on 19 December 2003. Besides, the National President of the JD(U) and the Leader of the Samata Legislature Party in the Bihar Legislative Assembly also conveyed their consent for the merger.

Decision of the Speaker

After consideration of circumstances and facts of the case, the Speaker, Shri Sadanand Singh, found the merger valid in terms of para 4 of the Tenth Schedule and accordingly treated the above-mentioned 27 MLAs as members of the Janata Dal (U). With this, the total strength of the Janata Dal (U) in the Assembly reached 35. The remaining 3 MLAs of the Samata Legislature Party, *viz. Sarvashri* Uma Shankar, Bhai Virendra and Ganesh Paswan, were allowed to remain and function as members of their original party, *i.e.* Samata Party.

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* *Sarvashri* Upender Prasad Singh, Baidhnath Prasad Mahato, Obedullah, Maheshwar Singh, Prabhudayal Singh, Manjit Kumar Singh, Hari Prasad Sah, Ashok Kumar, Bhudev Chaudhary, Damodar Rawat, Panna Lal Singh Patel, Shravan Kumar, Ramswarup Prasad, Hari Narayan Singh, Ram Charitra Prashad Singh, Satish Kumar, Vishvamohan Chaudhary, Bhuneshwar Singh *alias* Pappuji, Narender Kumar Pandey, Bhagwan Singh, Akhlak Ahmad, Sushil Kumar Singh, Dev Kumar Sharma, Uday Narayan Chaudhary and Smt. Ashvamegh Devi, Smt. Lesha Devi, and Smt. Sudha Shrivastav.

Janata Dal (Jai Prakash) Merger Case - I (Bihar LA, 2004)

Claim of merger by 2 out of 3 members of Janata Dal (Jai Prakash) with Janata Dal (U) - Found valid in terms of para 4 of Tenth Schedule - Recognized - Member treated accordingly

Facts of the Case

During the Twelfth Bihar Legislative Assembly, two out of the total three MLAs of the Janata Dal (Jai Prakash) Party, *viz.*, *Sarvashri* Shashi Kumar Rai and Vishwanath Singh intimated the Speaker that they had merged with the Janata Dal (U) Party. Shri Upendra Prasad Singh, the Leader of the JD(U) Legislature Party also conveyed his consent to the merger.

Decision of the Speaker

After consideration of circumstances and facts of the case, the Speaker, Shri Sadanand Singh, found the merger valid and accordingly treated the above-mentioned MLAs as members belonging to the Janata Dal (U) Legislature Party. Simultaneously, he allowed the remaining member, Shri Laxmi Narayan Prasad Yadav, to continue to function as a member of the Janata Dal (Jai Prakash).

Janata Dal (Jai Prakash) Merger Case - II (Bihar LA, 2004)

Claim of merger by lone member of Janata Dal (Jai Prakash) with Rashtriya Janata Dal - Found valid in terms of Para 4 of Tenth Schedule - Recognized - Member treated accordingly

Facts of the Case

During the Twelfth Bihar Legislative Assembly, the lone MLA of the Janata Dal (Jai Prakash) Party, Shri Laxmi Narayan Prasad Yadav, intimated the Speaker that his party had merged with the Rashtriya Janata Dal (RJD). The Leader of the RJD Legislature Party, Smt. Rabri Devi, also conveyed her consent for the merger.

Decision of the Speaker

After consideration of circumstances and facts of the case, the Speaker, Shri Sadanand Singh, found the merger valid in terms of para 4 of the Tenth Schedule and accordingly treated Shri Yadav as member of the RJD.

Samata Party Merger Case (Bihar LA, 2004)

Claim of merger by 3 MLAs of split away Group of Samata Party with Rashtriya Janata Dal - Found valid in terms of Para 4 of Tenth Schedule - Recognized - Members treated accordingly

Facts of the Case

During the Twelfth Bihar Legislative Assembly, three MLAs of the Samata Party, *viz. Sarvashri* Uma Shankar, Bhai Virendra and Ganesh Paswan, intimated the Speaker that they had merged with the Rashtriya Janata Dal (RJD). The Leader of the RJD Legislature Party, Smt. Rabri Devi, also conveyed her consent for the merger.

Decision of the Speaker

After consideration of circumstances and facts of the case, the Speaker, Shri Sadanand Singh, found the merger valid in terms of para 4 of the Tenth Schedule and accordingly treated the above-mentioned MLAs as members of the RJD.

Revolutionary Communist Party Merger Case (Bihar LA, 2005)

Claim of merger by 2 MLAs of Split away Group of Revolutionary Communist Party with Rashtriya Janata Dal - Found valid in terms of Para 4 of Tenth Schedule - Recognized - Members treated accordingly

Facts of the Case

During the Twelfth Bihar Legislative Assembly, two MLAs of the Revolutionary Communist Party, *viz. Sarvashri* Prayag Chaudhary and Vijay Prasad Gupta, intimated the Speaker that they had merged with the Rashtriya Janata Dal (RJD). The Leader of the RJD Legislature Party, Smt. Rabri Devi, also conveyed her consent for the merger.

Decision of the Speaker

After consideration of circumstances and facts of the case, the Speaker, Shri Sadanand Singh, found the merger valid in terms of para 4 of the Tenth Schedule and accordingly treated the applicants as members of the RJD.

(Bihar LC)

No information is available.

Chhattisgarh

Bahujan Samaj Party Case (Chhattisgarh LA, 2000)

Claim for split by 1 member in Bahujan Samaj Party (BSP) having total 3 members – Breakaway group formed new party by the name of Bahujan Samaj Party (Chhattisgarh) – Split valid in terms of provision of para 3 of Tenth Schedule – Taken cognizance of – Breakaway group merged with Indian National Congress – Merger valid in terms of Para 4 – Allowed.

Facts of the Case

Bahujan Samaj Legislature Party had a strength of three members in Chhattisgarh Legislative Assembly. On 6 November 2000, Dr. Chhavilal Ratre, MLA, *vide* a communication addressed to the Pro-tem Speaker, intimated that consequent upon a split in his original Party, *i.e.* the Bahujan Samaj Party (BSP) he had formed a new Party by the name Bahujan Samaj Party Chhattisgarh. He, therefore, requested for accord of recognition to the new Party.

Decision of the Speaker

On scrutiny of the facts and after hearing Dr. Ratre, the Pro-tem Speaker took note of the fact that out of the three members of the BSP, one member, *i.e.* Dr. Chhavilal Ratre, made the claim for split and he did constitute one-third of the strength of the BSP Legislature Party. Dr. Ratre, therefore, did not attract disqualification under the Tenth Schedule to the Constitution. The Pro-tem Speaker, accordingly, took cognizance of the split in the BSP. Dr. Ratre was treated as belonging to the BSP Chhattisgarh *w.e.f.* 23 November 2003.

Consequential Action

The decision of the Pro-tem Speaker regarding formation of the BSP Chhattisgarh was notified in the Assembly Bulletin Part II dated 23 November 2000. Dr. Chhavilal Ratre, MLA, was also intimated about the same.

Subsequent Developments

On 21 November 2000, Dr. Chhavilal Ratre, *vide* a communication submitted to the Pro-tem Speaker, intimated that his Party, *i.e.* BSP Chhattisgarh, had merged with the Indian National Congress. On examination of the communication in the light of the legal position and after hearing Dr. Ratre, the Pro-tem Speaker found that the request for merger was valid in terms of provisions of para 4 of the Tenth Schedule. Accordingly, the merger was allowed and Dr. Ratre was allotted a seat along with the members of the Indian National Congress in the Assembly.

Bharatiya Janata Party Split Case (Chhattisgarh LA, 2001)

Claim for split by 12 member in Bharatiya Janata Party (BJP) having total 35 members – Breakaway group formed new party by the name of Chhattisgarh Vikas Party – Split valid in terms of para 3 – Taken cognizance of –Breakaway group merged with Indian National Congress – Valid in terms of para 4 – Allowed.

Facts of the Case

In the first Chhattisgarh Legislative Assembly, a total of 35 members were elected on the ticket of the Bharatiya Janata Party or the BJP. On 20 December 2001, 12 out of the 35 members, *Sarvashri* Tarun Chatterjee, Haridas Bhardwaj, Ganguram Bagahel, Shakrajeet Nayak, Vikram Bhagat, Madan Singh Dehariya, Paresh Bagbahara, Premsingh Sidar, Lokendra Yadav, Sohanlal, Shrimati Shyama Dhruva and Shrimati Rani Ratnamla Devi, met the Speaker and submitted a communication intimating that consequent upon a split in the BJP, they had formed a new Party by the name of the Chhattisgarh Vikas Party. Stating that their strength was more than one-third of the BJP Legislature Party, they requested the Speaker to recognise the split.

They enclosed with their communication a copy of the resolution passed in their party meeting. Besides, they also produced names/details of the members/ office bearers and a copy of the Members of the Chhattisgarh Vidhan Sabha (Disqualification on ground of Defection) Rules (hereinafter referred to as the Assembly Anti-Defection Rules). Though the communication contained signatures of two more MLAs, Shri Rajinder Pal Singh Bhatia and Shri Charan Singh Manjhi, the Speaker treated their written submission invalid due to the fact that they did not appear before him in person.

Decision of the Speaker

Having heard the above-mentioned 12 members and on examination of matter in the light of the provisions of the Tenth Schedule read with the Assembly Anti-Defection Rules, the Speaker, Shri Rajendra Prasad Shukla, held that as the strength of the new Party was more than one-third of the undivided BJP Legislature Party,

the claim for split was valid as per the requirements of para 3 of the Tenth Schedule. On 20 December 2001, the Speaker took cognizance of the split in the BJP Legislature Party. He further held that the members belonging to the new Party, *i.e.* the Chhattisgarh Vikas Party, be allotted separate seats in the House.

Subsequent Developments

Later, on the same day, *i.e.* 20 December 2001, the above-mentioned 12 members again met the Speaker at around 7 p.m. and handed over a jointly signed letter to him intimating that their Party had merged with the Indian National Congress. They also submitted a copy of the resolution passed in their Party meeting on 20 December 2001 along with a letter of acceptance by the President, Chhattisgarh unit of the Indian National Congress. After hearing the concerned members and examining the claim for merger in the light of provisions of the para 4(2) of the Tenth Schedule read with the Assembly Anti-Defection Rules, the Speaker was satisfied that the merger was valid. Accordingly, the merger of the Chhattisgarh Vikas Party with the Indian National Congress was allowed by the Speaker.

The orders of the Speaker regarding formation of Chhattisgarh Vikas Party consequent upon split in BJP and subsequent merger of Chhattisgarh Vikas Party with INC, allowed on 20 December 2001, were notified in the Assembly Bulletin Part II dated 21 December 2001.

Charan Singh Manjhi Case (Chhattisgarh LA, 2002)

Member expelled from Bharatiya Janata Party (BJP) – Leader, Legislature Party informed Speaker about expulsion – Member declared unattached – Separate seat allotted.

Facts of the Case

On 6 February, 2002, Shri Nand Kumar Sai, the Leader of the Bharatiya Janata Party (BJP) Legislature Party in the Chhattisgarh Legislative Assembly submitted an application to the Speaker, Shri Rajendra Prasad Shukla, informing that as per decision taken by the National President of the Chhattisgarh Unit of the BJP, Shri Charan Singh Manjhi, MLA had been expelled from that Party. He also enclosed with application a copy of the letter written by *Sushri* Maya Singh, National General Secretary of the BJP to Shri Lakhi Ram Aggarwal, the State President of the BJP wherein the decision regarding expulsion of Shri Manjhi on account of anti-party activities had been conveyed. A copy of the letter sent subsequently by Shri Lakhi Ram Aggarwal to Shri Charan Singh Manjhi informing him of his expulsion from the primary membership of the BJP was also enclosed.

Decision of the Speaker

After examination of the matter in the light of the provisions in the Tenth Schedule of the Constitution read with the Assembly Anti-defection Rules, the Speaker *vide* his order dated 13 February 2002 declared Shri Charan Singh Manjhi as an unattached member. The Speaker also held in his order that Shri Manjhi did not incur any disqualification under the Tenth Schedule to the Constitution on account of his expulsion. The Speaker's order was notified in the Assembly Bulletin Part II dated 15 February 2002.

Goa

Luis Proto Barbosa Case (Goa LA, 1990)

Petition for disqualification filed against a member of Indian National Congress (INC) for having voluntarily given up membership – Respondent, who was Speaker at the time of filing of petition, resigned from primary membership of INC – House elected a member to decide petition in terms of Para 6(1) of Tenth Schedule - Petitioner raised two preliminary objections : Supreme Court was the appropriate forum to decide instant petition; member elected to decide petition also belonged to the Group the respondent belonged – Preliminary objections disallowed – Respondent *inter alia contended :* petition did not comply with Assembly Rules; matter being seized by Supreme Court could not be taken up in House – Member elected to decide petition held: respondent did not mention cause for resignation; he resigned to become an active politician; Speaker cannot be treated as ordinary member for the purpose of para 3 – respondent disqualified – Writ petition filed in High Court – Rejected – Supreme Court stayed disqualification – Stay subsequently vacated.

Facts of the Case

On 28 March 1990, Shri Luizinho Faleiro, MLA, filed a petition against Dr. Luis Proto Barbosa, MLA, praying for respondent's disqualification for having voluntarily given up membership of his original Party, *i.e.* the Indian National Congress (INC). Stating that the respondent by his act of tendering resignation from his original party had incurred disqualification under para 2 of the Tenth Schedule to the Constitution of India, the petitioner prayed that he be disqualified for being a member of the Assembly.

It was *inter alia* averred in the petition that the petitioner and the respondent were elected as members of the Assembly on 26 November 1989 as candidates of the INC. On 22 January 1990, the respondent was elected as the Speaker of the House. However, on 24 March 1990, he resigned from the INC alongwith six other

members* of the said Party. On the same day, they addressed a letter to the Governor of Goa stating that they had withdrawn support to the INC Government led by Shri Pratapsingh Rane. Subsequently, the seven-member breakaway Group formed a new Party called the Goan People's Party (GPP). Later, they formed Progressive Democratic Front (PDF) Government along with the Maharashtrawadi Gomantak Party (MGP) with Shri Churchil Alemao as the Chief Minister. Consequent upon Shri Alemao's resignation, the respondent was sworn in as the Chief Minister on 14 April 1990. In a subsequent development, the MGP withdrew support to the PDF Government on 30 November 1990 leading to Dr. Barbosa's resignation and subsequent fall of the Government.

In pursuance to the proviso to para 6(1) of the Tenth Schedule** to the Constitution of India, the House elected Dr. Kashinath Jhalmi to decide the petition (hereinafter referred to as member-elected).

The petitioner raised two preliminary objections in the rejoinder filed by him. Firstly, it was contended that the appropriate forum to decide the petition was the apex court, *i.e.* the Supreme Court of India. Secondly, Dr. Jhalmi, who was to decide the case, was a member of the Barbosa Cabinet. That being so, the petitioner apprehended that the decision would not be unbiased. Disposing of the objections, Dr. Jhalmi referred to proviso to para 6(1) and 6(2) of the Tenth Schedule and Article 191 of the Constitution of India stipulating provisions regarding disqualification and election of a member for taking decision in the event where the Speaker himself is subject to disqualification on grounds of Anti-defection Law. He *inter alia* stated that no claim could be made by any authority that the jurisdiction of the Supreme Court under article 136 or of the High Court under article 226 of the Constitution of India had been reduced by the mandate given to the Presiding Officers to decide such cases. He, therefore, overruled the objection. Referring to proper procedure followed in his election to decide the petition, he overruled the second objection too.

The respondent was given time to file his reply which he did, and also given personal hearing in accordance with the rules. The Leader of the INC Legislature Party, Dr. Wilfred D'souza, was also asked to file his statement, which, however, he did not.

During personal hearing the respondent prayed that the matter might not be

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* *Sarvashri* Churchil Alemao, J.B. Gonsalves, Somnath Zuwarkar, Luis Alex Cardozo, Mauvin Godinho and Miss Ferrel Freda Furtado.

** Where the question which has arisen is as to whether the Chairman or the Speaker of the House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

heard on that day as there was a notice of No-Confidence Motion moved against Dr. Jhalmi. The prayer was denied. The respondent also contended that as there was a split in the party and that the member elected to decide the case and the respondent were in different groups, the decision in the matter could not be without bias. The respondent was informed that it amounted to casting aspersions on the Chair and that the member elected enjoyed all powers of the Speaker of the House. The third objection was made on the ground that the matter was already seized by the Supreme Court of India. This objection too was overruled. The respondent argued on the maintainability of the petition on the ground of correctness of the documents relied upon by the petitioner. Dr. Jhalmi was of the view that this contention was not correct as the annexures to the petition were signed by the petitioner as true copy of the original.

After careful consideration, the following issues were framed:

(i) Whether giving up the primary membership of the political party by the Speaker to which he belonged after a period of more than two months from the date of election to the Office of the Speaker can be considered as resignation by reason of election to the Office of the Speaker?

(ii) Whether while continuing to be in the Office of the Speaker, he could voluntarily give up membership of the political party for any cause other than election to the Office of the Speaker without incurring any disqualification under the Tenth Schedule?

(iii) Whether the Speaker after giving up the membership of his political party could join a newly formed party?

(iv) Whether the Speaker could be treated as an ordinary member of House for the purpose of para 3 of the Tenth Schedule.

Decision of the Member-Elected

After consideration of the facts and circumstances and material on record, Dr.Kashinath Jhalmi, the member elected under proviso to para 6(1) of the Tenth Schedule to the Constitution of India, gave his decision dated 14 December 1990 in the matter. Regarding the first issue, Dr. Jhalmi opined that if the respondent wanted to resign from his party for the purpose of remaining non-partisan in the House, nothing prevented him for mentioning the cause either in a separate letter or at least making it public through the media in the press conference held subsequently. Even if one presumes the cause of resignation as "election to the Office" of the Speaker, in absence of specific mention of it in the letter of resignation one cannot explain why he should do so after a period of two months after such election. His answer

to first issue, therefore, was in negative.

Regarding issues (ii) and (iii), Dr. Jhalmi opined that the fact that respondent formed or joined Goan People's Party and was made or become its Leader, was sufficient proof to conclude that he resigned from his Party to become an active politician while continuing to be the Speaker. It was also held that the background and spirit of exemptions under para 5 of the Tenth Schedule is not certainly to encourage the Speaker becoming active politician during his tenure as Speaker. So long as he continues to be in the Office, he cannot even rejoin his own party which he had given up due to reasons of his election to the Office. The respondent during personal hearing had not offered any comments as to whether he joined or formed any new political party. Dr. Jhalmi, therefore, concluded that the reply to both issues, (ii) & (iii) were in negative. As regards the fourth issue, Dr. Jhalmi opined that the Speaker could not be treated as an ordinary member of the House for the purpose of para 3 of the Tenth Schedule.

Delivering his decision, Dr. Jhalmi held as under:

1. I, declare that Dr. Luis Proto Barbosa has become subject to disqualification under para 5 of Tenth Schedule to the Constitution of India.
2. The petition is allowed.
3. I order the petition, the proceedings of this petition, the judgment and this order to form part of the proceedings in the House within the meaning of article 212 of the Constitution of India.

Subsequent Developments

Thereafter, as no Group in the Assembly was able to establish majority, the State was brought under the President's Rule and the Assembly was kept in suspended animation.

Dr. Luis Proto Barbosa filed a Writ Petition before the High Court of the Judicature at Bombay (Goa Bench) and the High Court rejected his petition. Dr. Luis Proto Barbosa preferred an Appeal before the Supreme Court of India and obtained stay on the impugned order. However, the Supreme Court *vide* its judgment dated 18 December 1990 vacated the stay.

Luis Proto Barbosa and Others Case (Goa LA, 1990)

Voluntarily giving up membership of Congress (I) Party – Petition seeking disqualification filed–Speaker held: petition not maintainable on ground of inordinate delay and Non-compliance of provisions of Rules as contained in Anti-Defection Rules–Petition dismissed.

Facts of the Case

Shri Mohan Amshekar, M.L.A gave a petition under the Tenth Schedule to the Constitution of India before the Speaker, Goa Legislative Assembly, against *Sarvashri* Dr. Luis Proto Barbosa, Churchill Alemao, J.B. Gonsalves, Somnath Zuwarkar, Luis Alex Cardozo, Mauvin Godinho and Miss Farrel Freda Furtado, all M.L.As, for having voluntarily given up their membership of their original Party, *i.e.* the Congress (I).

Decision of the Speaker

Considering the petition under the provisions of the Members of the Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, the Speaker observed that the petition for disqualification of a member has to comply with the requirements of Rule 6(6), according to which every petition has to be signed and verified by the petitioner in the manner laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for verification of pleadings. Further, Rule 7(2) provides that if the petition does not comply with the requirements of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly. As regards the instant petition, the Speaker opined that the same suffered from non-compliance of the said Rules. The Speaker, Shri Surendra V. Sirsat, *vide* his decision dated 6 February 1991 dismissed the petition on account of inordinate delay and non-compliance of the provisions stipulated in Rule 6(6) of the Assembly Anti-defection Rules, 1986.

Consequential Action

The Speaker's order was published in the official Gazette of the Government of Goa and the Bulletin Part-II of the Assembly.

Churchil Alemao and Others Case (Goa LA, 1990)

Voluntarily giving up membership of Congress (I) Party – Petition Seeking disqualification filed – Respondent submitted that a split had taken place in their original Party and the split-away group consisted of one-third of the membership of the Legislature Party; the new Group, therefore, enjoyed protection under para 3 of the Tenth Schedule; the petition did not comply with provisions of the Law – Petition disallowed.

Facts of the Case

Shri Dominick Fernandes, M.L.A. and 11 other members of the Goa Legislative Assembly *vide* a petition filed before the Speaker under the relevant provisions of the Tenth Schedule to the Constitution of India prayed for disqualification of *Sarvashri* Churchil Alemao, J.B. Gonsalves, Somnath Zuwarkar, Luis Alex Cardozo, Mauvin Godinho and Miss Farrel Freda Furtado, all MLAs, for having voluntarily given up their membership of their original political party, *i.e.* the Congress (I) Party.

Having found that the petition was in order, the Speaker directed issuance of a notice to the respondents directing them to submit their replies.

The respondents *vide* their reply submitted to the Speaker stated that consequent upon a split in their party, *i.e.* the Congress (I) Party, seven members had formed a separate Group. As the split was valid in terms of para 3 of the Tenth Schedule, the relevant provisions leading to disqualification on ground of voluntarily giving up membership did not apply in their case. Further, the petition did not comply with provisions of Rule 6 and 7 of the Members of Goa, Daman and Diu Legislative Assembly (Disqualification on ground of Defection) Rules, 1986. Elaborating the issue of non-compliance of provisions of the said rules, the respondents submitted that the instant petition, which was signed by only one petitioner, should have been signed and verified by all the twelve members. The respondents, therefore, prayed for summary dismissal of the petition.

Decision of the Speaker

Considering the submissions made in the replies, the Speaker, Shri Surendra V. Sirsat, gave his decision dated 13 December 1990 in the matter under the

Tenth Schedule. The Speaker in his decision found sufficient substance in the objections raised by the respondents. Since the petition did not comply with the mandatory provisions of Rule 6(6) and 7, it attracted Rule 7(2) of the Assembly Anti-Defection Rules,1986 which provides for summary dismissal of petitions for such a non-compliance. The Speaker, therefore, dismissed the petition.

Consequential Action

As directed by the Speaker, his order was published in the Official Gazette of the State of Goa and the Bulletin Part-II of the Goa Legislative Assembly.

Carmo Rafael Pegado Case (Goa LA, 1990)

Voluntarily giving up membership of Congress (I) Party – Petition for disqualification filed–Claimed that respondent, who was elected as an Independent member declared himself as a candidate set up by Congress (I) Party in an earlier petition submitted to the Speaker – Speaker held : Rules do not prohibit Independent members from supporting a party or to accept Office of a Minister; respondent signed petition in a hurry and without properly reading it – Petition disallowed.

Facts of the Case

Shri Vinayak Naik, M.L.A. gave a petition dated 30 November 1990 under the Tenth Schedule to the Constitution against Dr. Carmo Rafael Pegado, M.L.A., wherein he prayed for his disqualification in terms of para 2(1)(a) of the Tenth Schedule.

The petitioner submitted that the respondent, who had been elected as an Independent candidate, in his petition dated 28 March 1990, made before the Speaker along with some other members of the Congress (I) Party against seven members of that Party, declared himself as a member of the Congress (I) Party. The petitioner contended that the wording of the petition showed that the respondent had joined the Congress (I) Party and had, hence, incurred disqualification under the Tenth Schedule to the Constitution.

On receipt of the petition and having found that the same was in order, the Speaker caused issuance of notice to the respondent asking him to furnish his comments thereon.

In his comments submitted to the Speaker on 14 December 1990 and during personal hearing before the Speaker, the respondent refuted the allegations made by the petitioner.

While going through the petition and arguments made on behalf of the two parties, the Speaker had to decide whether the opening sentence in the petition dated 28 March 1990 indicated that the respondent had joined the Congress (I) Party even though he was elected as an Independent member. The sentence in question read as follows:

"... petitioners, undersigned are members of the Goa Legislative Assembly

and, they were set up for the Genreal Elections to the Goa Legislative Assembly, held recently, by the Indian National Congress".

Dr. Kashinath Jhalmi who appeared on behalf of the petitioner contended that by signing the petition dated 28 March 1990, the respondent had shown that he was a member of the Congress (I) Party. Besides, he also accepted the Office of a Minister in the Congress (I) Government and voted in line with the policy of that party. The respondent's conduct, therefore, proved that he was working as a member of the Congress (I) Party.

Decision of the Speaker

After considering the facts and circumstances of the case, Shri Surendra V. Sirsat, the Speaker, Goa Legislative Assembly, gave his decision dated 7 February 1991 under the Tenth Schedule in the matter. Considering the arguments preferred by Dr. Jhalmi, the Speaker in his decision opined that an Independent member is not prohibited to support a party or to take up the Office of a Minister in a Government. He, therefore, held that by becoming a Minister and voting in line with the Congress (I) Party, the respondent could not be said to have become a member of that Party. Besides, the petitioner did not raise the issue of the respondent's joining of the Congress (I) Party in his petition. He only brought to the attention of the Speaker the wording of the petition dated 28 March 1990 signed by the respondent. In his decision, the Speaker held as under:

> "In the present case, it is quite clear that Dr. Carmo Pegado has signed a statement by MLAs who had contested elections on Congress (I) ticket, without either reading it or realising what has been written, because Dr. Carmo Pegado had contested elections as an Independent candidate.
>
> By no stretch of imagination that statement can be interpreted to mean that Dr. Carmo Pegado had joined the Congress (I) Party. ... I am clearly of the opinion that no case is made out that Dr. Carmo Pegado has joined the Congress (I) Party. In the result, I dismiss the petition."

Consequential Action

The Speaker's order was published in the Bulletin Part-II and the Gazette of the Government of Goa.

Ratnakar Chopdekar and Sanjay Bandekar Case (Goa LA, 1990)

Voluntarily giving up membership of Maharashtrawadi Gomantak Party – Petition seeking disqualification filed for alleged violation of whip – Speaker held: respondents' action and speech amounted to disqualification; violation of whip also invoked disqualification – Petition allowed – Respondents disqualified – Writ petition in High Court – Stay on Speaker's order – Review Petition before Acting (Deputy) Speaker – Acting Speaker held: principles of natural justice not observed in proceedings; respondents were not allowed sufficient opportunity for defence; alleged cause of action not sufficient for disqualification – Earlier order set aside – Petitioners filed petition in High Court – Dismissed – Petition in Supreme Court – Transferred to High Court – Allowed – Respondents disqualified – Petition in Supreme Court against High Court Judgement – Disallowed.

Facts of the Case

On 10 December 1990, Shri Ramakant D. Khalap, M.L.A., and the Leader of the Maharashtrawadi Gomantak Party, filed two petitions under the Tenth Schedule to the Constitution of India praying for disqualification of Shri Ratnakar Chopdekar and Shri Sanjay Bandekar, M.L.As. In one petition the petitioner alleged that the respondents had voluntarily given up their membership of the Maharashtrawadi Gomantak Party or the M.G.P.

In another petition, the petitioner alleged that the respondents did not attend the sitting of the Assembly on 10 December 1990 despite a whip issued to them by their original party, *i.e.* the M.G.P. The petitioner in his petitions contended that the respondents had incurred disqualification under para 2(1)(a) and (b) of the Tenth Schedule to the Constitution of India and were, therefore, liable for disqualification from the membership of the Goa Legislative Assembly.

In response to the notice issued by the Assembly Secretariat, the respondents filed their replies. During personal hearings, they were represented by their Counsels. Appearing on behalf of the petitioner, Dr. Kashinath Jhalmi, M.L.A, produced before the Speaker copies of several newspaper clippings containing photographs of the respondents with Dr. Wilfred D'Souza-led delegation comprising of various Congress

(I) M.L.As and Dr. Luis Proto Barbosa etc., during their meeting with the Governor of Goa. Dr. Jhalmi argued that the respondents' conduct clearly showed that they had voluntarily given up their membersip of their original party.

Decision of the Speaker

After considering the facts and circumstances of the case and documents on record, the Speaker, Shri Surendra V. Sirsat, gave decision dated 13 December 1990 in the matter. Having gone through arguments and counter arguments, the Speaker was of the view that by their conduct, actions and speech, the respondents had voluntarily given up their membership of the M.G.P. Besides, in their reply, they did not refute the fact that they had gone to meet the Governor of Goa with Dr.Wilfred D'Souza and others. Moreover, in the Speaker's opinion, they incurred disqualification by their act of non-attendance of the Assembly Session in contravention of the whip issued by their original party. Accordingly, the Speaker declared the respondents as disqualified from being the members of the Assembly under article 191(2) read with para 2(1) (a) and (b) of the Tenth Schedule to the Constitution of India .

Consequential Action

The Speaker's order was published in the Official Gazette of the State of Goa and Bulletin Part-II of the Assembly dated 13 December 1990.

Subsequent Developments

Sarvashri Chopdekar and Bandekar filed writ petition No. 321/1990 before the Division Bench of the Bombay High Court on 13 December 1990 and obtained a stay on the operation of the order. Thereafter, Shri Surendra V. Sirsat was removed from the Office of the Speaker. *Sarvashri* Chopdekar and Bandekar *vide* two separate Review Petitions dated 4 March 1991, challenged the order of the then Speaker before the Deputy Speaker, who was acting as Speaker, and prayed for setting aside the order passed by the Speaker.

Considering the matter in the light of the relevent provisions of the Tenth Schedule read with the Assembly Anti-Defection Rules, 1986, the Acting Speaker, at the outset, opined that he was competent to entertain the matter and rescind or set aside the earlier order passed by his predecessor. Besides, on perusal of the proceedings and the aforesaid order, he arrived at the following conclusions:

(a) that, in violation to the principles of natural justice, the whole procedure– right from the issue of the show cause notice until the passing of the said

order – showed that the members were not given sufficient time or reasonable opportunity to present their case properly.

(b) that, since both the members were disqualified within two days of violation of the whip issued by the M.G.P, they were deprived of the benefit of the fifteen days' grace period during which their absence from voting could have been condoned.

(c) that, there were no grounds or evidence on the record to sustain that their conduct, action and speech amounted to voluntarily giving up membership of their original party.

He further opined that the said order dated 13 December 1990 passed by his predecessor was without jurisdiction and unsustainable and he had no option but to set aside or rescind it.

Accordingly, the Deputy Speaker set aside the above-mentioned order observing that the petitioners continued to be members of the Goa Legislative Assembly with restrospective effect.

Shri Ramakant Khalap and Dr. Kashinath Jhalmi, M.L.As, filed a writ petition before the High Court of Judicature at Bombay (Goa Bench) for stay of operation of the order passed by the Deputy Speaker. The High Court rejected the petition on the ground of delay and laches.

Later, Shri Khalap and Shri Jhalmi made an Appeal before the Supreme Court of India and the Supreme Court directed the High Court of Judicature at Bombay (Goa Bench) to dispose of the Writ Petitions preferably by 30 April 1993. The High Court by its order dated 14 May 1993 disqualified Shri Chopdekar and Shri Bandekar. The members filed Special Leave Appeal before the Supreme Court against the order of the High Court.

The Supreme Court of India *vide* its decision dated 9 February 1994 dismissed the Appeals filed by Shri Sanjay Bandekar and Ratnakar Chopdekar.

Ravi Naik Case (Goa LA, 1991)

Voluntarily giving up membership of Maharashtrawadi Gomantak Party (MGP) – Petition seeking disqualification filed - Claimed that split claimed by respondent and 7 other members was not valid as intimation under para 3 of Assembly Anti-Defection Rules, 1986 was not forwarded to Speaker; respondent did not submit copies of notices calling for meeting wherein split took place and agenda thereof; two members of the split-away group were already disqualified; one member had denied having joined that group - Petition allowed – Respondent disqualified – Writ Petition in High Court – Stay granted on Speaker's order – Review Petition before Acting Speaker – Acting Speaker held : petitioner was not allowed sufficient opportunity for defence; split was valid – Petition allowed – Respondent allowed to continue as member – Writ petition in High Court – Disallowed – Petition in Supreme Court – Transferred to High Court – Respondent disqualified – Petition in Supreme Court – Allowed – Petitioner allowed to continue as member

Facts of the Case

On 25 January 1991, Dr. Kashinath Jhalmi, M.L.A., filed a petition under the Tenth Schedule to the Constitution of India read with article 191(2) praying for disqualification of Shri Ravi S. Naik, M.L.A., under para 2(1)(a) of the Tenth Schedule for having sworn himself as the Chief Minister of Goa by voluntarily giving up membership of the Maharashtrawadi Gomantak Party or the M.G.P.

Having found that the petition was in order, the Speaker caused issuance of a copy each of the petition to the respondent and Shri Ramakant D. Khalap, the Leader of the M.G.P., directing them to file their comments within seven days of the receipt of the same under the Members of Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 (hereinafter referred to as the Assembly Anti-defection Rules, 1986).

Shri R.D. Khalap *vide* his reply confirmed that Shri Ravi Naik had voluntarily given up his membership of the M.G.P. and formed a separate Group. On the other hand, Shri Ravi Naik requested for extension of time for filing his reply as he was hospitalized. The Speaker granted him extension till 11 February 1991. On 11 February 1991, Shri Ravi Naik again sought extension of time for three weeks

on the ground that he had not fully recovered from illness. The Speaker, however, granted extension till 13 February 1991. On 13 February 1991, the petitioner and the respondent's Counsel appeared before the Speaker. Shri Ravi Naik *vide* his written reply submitted through his Counsel enclosed a photostat copy of the purported resolution passed by the split-away Group at his residence at Ponda. Shri Naik contented that there was a split in the M.G.P. and the split-away group had one-third strength providing it protection under para 3 of the Tenth Schedule.

On the basis of the facts in the petition and reply filed by the respondent, following issues emerged for consideration of the Speaker.

(i) whether the purported split took place in the M.G.P.? and

(ii) whether the split-away group consisted of the one-third of the M.L.As of the M.G.P.?

During the personal hearing, the petitioner contended that the respondent's claim regarding split was not proved. According to him, the respondent should have produced copies of notices calling the members to attend the meeting at Ponda and signatures of members who actually attended the meeting along with the copy of resolution. Secondly, no information regarding the split was forwarded to the Speaker under Rule 3 of the Assembly Anti-defection Rules, 1986. Thirdly, two members of the split-away Group had already been disqualified and one member, Shri Dharma Chodankar, had complained in writing that Shri Ravi Naik and others forcibly obtained his signatures. On the contention of the respondent's Counsel that the requisite formalities regarding forwarding of the information to the Speaker could not be fulfilled as the Assembly was under suspended animation, the petitioner contended that since the concerned articles of the Constitution and the Office of Speaker were functional, the information should have been given as required under the law. In this regard, the petitioner also referred to the decision of Shri Rabi Ray, Speaker, Ninth Lok Sabha, dated 11 January 1991 under the Tenth Schedule to the Constitution to show the procedure to prove a valid split.

Decision of the Speaker

After considering the facts and circumstances of the case and material on record, the Speaker, Shri Surendra V. Sirsat, gave his decision dated 15 February 1991 under the Tenth Schedule. Considering the matter in the light of the facts in the petition, reply and issues that emerged during the hearing, the Speaker held that the respondent could have made the matter simple by producing affidavits of the members belonging to the split-away Group. Besides, in the light of facts that two of the members mentioned by the respondent had already been disqualified and

another one had denied that he belonged to the new Group, the Speaker declined to acknowledge existence of the split-away Group consisting of one-third members of the M.G.P. He, therefore, answered both the issues in negative. Holding that Shri Ravi Naik was not covered under para 3 of the Tenth Schedule to the Constitution, the Speaker disqualified him from being the member of the Assembly.

Consequential Action

The Speaker's decision was published in the Official Gazette of the State of Goa and Bulletin Part II of the Assembly dated 15 February 1991.

Subsequent Developments

Shri Ravi Naik *vide* a writ petition challenged the impugned order before the Goa Bench of the Bombay High Court and obtained a stay on 18 February 1991. In the meantime, the Speaker, Shri Surendra V. Sirsat, was removed from the Office of the Speaker. Later, Shri Naik filed an application dated 4 March 1991 before the Acting (Deputy) Speaker, Shri Simon Peter D'Souza, wherein he sought review of Speaker's order dated 15 February 1991 and made a prayer for setting aside the said order disqualifying him. He contended that as the Assembly was under suspended animation, he was under the impression and honestly believed that the requisite information could have been forwared to the Speaker within 30 days of the revocation of the proclamation imposing the President's Rule. Secondly, it was not justifiable to draw inferences and to ask for copies of notices calling the members for the meeting held at Ponda where the split took place.

Considering the matter in the light of the proceedings conducted by his predecessor, the Acting (Deputy) Speaker *vide* his decision dated 8 March 1991 opined, that as held by him in the case of *Sarvashri* Ratnakar M. Chopdekar and Sanjay V. Bandekar, the Officiating Speaker was competent to decide the instant petition. Secondly, Shri Ravi Naik was not given reasonable opportunity to defend himself. Interestingly, in a similar case, Dr. Carmo Rafael Pegado, who was hospitalized, was granted extension of 30 days. Thirdly, opining that non-compliance of Rule 3 of the Assembly Anti-defection Rules, 1986 did not undo the process of split, the Acting Speaker held that the split in the M.G.P. was valid. In his decision, he held as under:

> "I, therefore, hold that consequent upon the split which occurred in the M.G. Party and subsequent upon the formation of the faction in the Legislative Wing, as a result of the split in the M.G. Party in view of the fact that there

was a split in the M.G. Legislature Party comprising of more than 1/3rd Members of which the petitioner was one, the petitioner is fully covered by paragraph 3 of the Tenth Schedule of the Constitution and I am, therefore, rescinding and setting aside the impugned order. I hold that the petitioner continues to be a Member of the Legislative Assembly at all times from the date of elections without any break. The impugned order is, therefore, held to be of no effect."

Shri Ramakant Khalap, M.L.A. and the Leader of the M.G.P. and Dr. Kashinath Jhalmi filed a writ petition in the High Court of Judicature at Bombay (Goa Bench) against operation of the order passed by the Deputy Speaker. The High Court rejected the petition on the ground of delay and laches.

Later, an appeal was filed before the Supreme Court and the Supreme Court directed the High Court at Bombay (Goa Bench) to dispose of the writ petitions preferably by 30 April 1993.

The High Court *vide* its order dated 14 May 1993 disqualified Shri Ravi S. Naik. Shri Naik filed a Special Leave Appeal before the Supreme Court. The Supreme Court granted stay, *vide* its order 19 July 1993 and Shri Ravi S. Naik was allowed to continue as a member of the Assembly.

Shankar Salgaonkar and Others Case (Goa LA, 1991)

Voluntarily giving up membership of Maharashtrawadi Gomantak Party – Petition seeking disqualification filed – Respondents contended: a petition for disqualification can be heard by Speaker and not by Deputy Speaker; request for examination of respondents as witnesses – Speaker held: in case of a vacancy in the Office of Speaker, Deputy Speaker or Acting Speaker was competent to decide petitions for disqualification; respondents cannot be examined as witness; and since respondents effected a split in the original Party as per Para 3 of the Anti-Defection Law, there was no case for disqualification – Petitions disallowed.

Facts of the Case

Dr. Kashinath Jhalmi, M.L.A., gave four petitions, under the Tenth Schedule to the Constitution of India wherein he prayed for disqualification of *Sarvashri* Shankar Salgaonkar, Vinay Kumar Usgaonkar, Pandurang D. Raut and Ashok T. Naik Salgaonkar, all M.L.As, for having voluntarily given up the membership of their original party, *i.e.* the Maharashtrawadi Gomantak Party or the M.G.P.

It was averred in the petitions that in a meeting held at the residence of Shri Ravi Naik at Ponda on 24 December 1990, the respondents effected a split in their original political party and declared formation of a new Group. It was contended by the petitioner that this act of respondents amounted to giving up of membership of their original Party, *i.e.* the M.G.P. and they had thereby incurred disqualification under the relevent provisions of the Tenth Schedule.

In the meantime, the Speaker, Shri Surendra V. Sirsat, was removed from the Office of the Speaker and Shri Simon Peter D'Souza began functioning as Speaker.

Having examined the facts in the petitions, Shri D'Souza, who was acting as the Speaker, directed for issuance of a notice to the respondents asking them to furnish their comments within seven days as per the provisions of Rule 7 of the Goa Legislative Assembly (Disqualification on ground of defection) Rules, 1986. The respondents, however, sought one month's extension for submission of their comments, which was granted by the Speaker. All respondents furnished their comments on 18 March 1991. The personal hearing in the matter, convened by the Speaker on 19 April 1991, was attended by the petitioner in person, whereas all the

respondents were represented by their Counsels.

During the course of the personal hearing, the petitioner raised an objection to the effect that under para 6(1) of the Tenth Schedule to the Constitution of India, a matter involving disqualification can be decided by the Speaker and not by the Deputy Speaker. The Speaker, Shri D'Souza, while overruling the objection opined that since at the time of consideration of the matter the Office of the Speaker was vacant, the Deputy Speaker or the Acting Speaker was competent and empowered to decide the issue.

Having argued on the preliminary objection, the petitioner sought permission to examine some of the respondents as witnesses. Objecting to this demand, the respondents' Counsel contended that as the proposed witnesses were the respondents and parties for disqualification, they could not be called as witnesses. Besides, if the petitioner wanted to examine them, he should have cited their names in his petition at initial stage or at the commencement of the hearings. In this connection, the Speaker opined that though he was not averse to the petitioner examining any witnesses, his attempts seemed to be half hearted. Keeping in view the prevailing circumstances and the fact that the petitioner had chosen to argue the matter on merits, the Speaker did not see any justification in allowing the application of the petitioner for examination of the witnesses.

Decision of the Speaker

After taking into account the facts and circumstances of the case, Shri Simon Peter D'Souza, Acting Speaker, gave his decision dated 20 June 1991 under the Tenth Schedule in the matter. The Speaker in his decision held that in the instant case the respondents were covered under para 3 of the Tenth Schedule to the Constitution of India. As a matter of fact, there was a split in the Maharashtrawadi Gomantak Party on 24 December 1990 where the respondents along with four other M.L.As belonging to that party constituted themselves as a separate Group, *i.e.* Maharashtrawadi Gomantak Party (Ravi Naik Group). The Speaker further held that the petitioner did not produce before him any piece of evidence or material to reach the conclusion that the respondents had incurred disqualification. The Speaker therefore, held as under:

> "I therefore, in the light of the above, dismiss the said 4 petitions filed by the petitioners by this common order."

Consequential Action

The Speaker's order was published in the official Gazette of the State of Goa and the Bulletin Part II of the Goa Legislative Assembly.

Luis Alex Cardozo and Others Case (Goa LA, 1992)

Voluntarily giving up membership of Indian National Congress – Petition seeking disqualification filed – Earlier, consequent upon a split in Indian National Congress, splitaway group had formed a new Party – Petitioner contended: one of the members of splitaway group was disqualified prior to the alleged split; with his disqualification the splitaway group fell short of one-third strength of the undivided Indian National Congress Legislature Party; the remaining members of the splitaway group were also, therefore, liable for disqualification; the chain of events established that there was no valid split in INC – Respondent submitted: petition was filed after a considerable delay; an earlier petition for the same cause of action was also disallowed; petition did not comply with provisions of Rules – Speaker held: split being one time process, subsequent disqualification of a member cannot be a ground for reconsideration – Petition dismissed.

Facts of the Case

On 4 January 1992, Shri Victor Gonsalves, MLA, gave six petitions under the Tenth Schedule to the Constitution of India praying for disqualification of *Sarvashri* Luis Alex Cardozo, Somnath Zuwarkar, J.B. Gonsalves, Mauvin Godinho, Churchil Alemao and Smt. Farrel Furtado e Gracias, all MLAs, for having voluntarily given up their membership of the Indian National Congress.

Considering the facts in the petitions and having found that the same were in order, the Speaker instructed the respondents to file their comments within seven days. Though the respondents sought three months extension *vide* their letter dated 13 January 1992, the Speaker granted them time up to 12 March 1992, for filing their comments.

Prior to this, on 24 March 1990, the aforesaid respondents along with Dr. Luis Proto Barbosa, the then Speaker of the Goa Legislative Assembly, had tendered their resignations from the primary membership of the Indian National Congress Party *vide* communications sent to the Governor of Goa and the President, Goa Pradesh Congress (I) Committee. On the same day, they also formed a separate Party, called the Goa People's Party, with Dr. Barbosa as its President. The

Governor communicated this fact to Shri Pratapsingh Rane, the then Chief Minister of Goa. On 25 March 1990, Shri Edurado Falerio, the President, Goa Pradesh Congress (I) Committee, accepted resignations of all the seven members. Later, on 27 March 1990, Shri Luizinho Falerio, MLA, gave a petition for disqualification against Shri Barbosa, the then Speaker, for having voluntarily given up his membership of his original Party. Dr. Kashinath Jhalmi, MLA, who had been elected by the House in terms of proviso of para 6(1) of the Tenth Schedule to take a decision on the petition, *vide* his order dated 14 December 1990, declared that Shri Barbosa had become subject to disqualification.

In the instant petitions, the petitioner while praying for disqualification of the remaining members of the split-away group contended that disqualification of Dr. Barbosa established that no split had taken place in the Indian National Congress. Simultaneously, in another significant development, the Speaker of the Goa Legislative Assembly rejected a petition for disqualification of the respondents filed by Shri Domnick Fernandes, MLA, on the ground that it did not conform to the rules as framed under the Tenth Schedule.

In their respective replies, the respondents made following submissions:

(i) since the petition was filed after a gap of almost two years, the same was not tenable;

(ii) the petition was barred by Res-judicata or principle analogous thereto because an earlier petition on the same cause was rejected by the Speaker;

(iii) they denied that the disqualification of Dr. Barbosa could affect their claim that there was a split in the Indian National Congress Party and the split-away Group consisted of not less than one-third of the Legislature Party.

On the basis of contentions made in the petition and the comments of respondents, the following issues emerged for consideration of the Speaker:

(i) whether the petition was liable to be dismissed as it was filed after almost two years from the date of the alleged cause of action?

(ii) whether the petition was barred by Res-judicata or principles analogous thereto because the earlier petition on the same issue was rejected by the then Speaker on 13 December 1990?

(iii) what was the effect of the withdrawal of Writ Petition No.492 of 1990 filed by Dr. Wilfred D'Souza, Leader of the Congress (I) Party who had sought the respondent's disqualification in the Supreme Court on the same cause of action?

(iv) whether the petition failed to comply with the provisions of the Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986?

During personal hearing by the Speaker in the matter, the Counsels of the respondents *inter alia* stated that the two years period that the petitioner took to file his petition was not a reasonable time, considering the very simple scheme of the Act. Further, it was contended that under paragraph 6 of the Tenth Schedule, a petition seeking disqualification of a member can be made to the Speaker only once and that the instant petition, which was rejected by the Speaker earlier was, therefore, not tenable. Besides, it was argued that the petitioner did not verify the annexure to the petition as per procedure laid down in the Goa Assembly Anti-Defection Rules. The petition was, therefore, liable for summary dismissal. The petitioner, who was represented by his Counsel, also presented his viewpoint on issues referred to above.

Decision of the Speaker

After considering the facts and circumstances of the case and material on record, the Speaker, Shri Sheikh Hassan Haroon, gave his decision dated 15 September 1994 under the Tenth Schedule in the matter. The Speaker in his decision opined that submission of the petition after almost two years of the occurrence of the cause of action was contrary to the Doctrine of Reasonableness of Time, as reflected in the decision rendered by the Supreme Court in the Dhartipakar Madan Lal Aggarwal vs Rajiv Gandhi Case. Further, withdrawal of Writ Petition No.492 of 1990 in Supreme Court on the same cause of action by Dr. Wilferd D'Souza, the Leader of the Congress (I) Legislature Party, proved that the petition amounted to Res-judicata. The Speaker, therefore, answered issues at 1 to 4 in affirmative. As regards the arguments of the petitioner that Dr. L.P. Barbosa, who had since been disqualified, could not be counted to constitute one-third of the members of the Legislature Party, the Speaker while rejecting the arguments, opined that the split being one time process the subsequent disqualifiction of Dr. Barbosa could not be taken into consideration for this purpose. Consequently, the Speaker dismissed all the petitions.

Consequential Action

The Speaker's decision was published in Bulletin Part II of the Assembly and the Official Gazette of the State of Goa.

Dharma Chodankar Case (Goa LA, 1992)

Petition for disqualification filed for voluntarily giving up membership of Maharashtrawadi Gomantak Party (Ravi Naik Group) – Respondent along with some others members effected a split in M.G.P. and subsequently formed M.G.P. (Ravin Naik Group); later he again defected to the original Party incurring disqualification under Anti-Defection Law – Respondent contended: no split took place in M.G.P.; petition did not comply with provisions of Anti-Defection Law – Speaker held: there was a considerable delay in filing petition; petition was not filed in accordance with provisions of the Anti-Defection Law – Petition disallowed.

Facts of the Case

On 9 January 1992, Shri Pandurang Raut, M.L.A., gave a petition under the Tenth Schedule to the Constitution praying for disqualification of Shri Dharma Chodankar, M.L.A. for having voluntarily given up his membership of his original political party, *viz.* Maharashtrawadi Gomantak Party (Ravi Naik Group) or the M.G.P. (Ravi Naik Group).

It was *inter alia* averred in the petition that the respondent along with the petitioner and some other members of the Legislative Assembly had claimed a split in the M.G.P. and constituted the M.G.P. (Ravi Naik Group) at a meeting held on 24 December 1990. Later, however, he again defected and rejoined the M.G.P. Besides, he also violated a whip issued by the M.G.P. (Ravi Naik Group) whereby the members of that Party had been instructed to vote in accordance with the directives of that Party. In these circumstances, there was reasonable ground to believe that the respondent had incurred disqualification under para 2(1)(a) and(b) of the Tenth Schedule to the Constitution of India for being members of the Assembly.

Copies of the petition were forwarded to the respondent and Shri R.D. Khalap, Leader of the M.G.P., for their comments within seven days of receipt of the copies of the petition.

Shri R.D. Khalap and the respondent, however, prayed for an extension of two and three weeks time respectively for filing their comments. Considering their prayer, the Speaker allowed them extension of time till 16 March 1992. Meanwhile,

the Speaker also allowed the petitioner to amend some facts in the petition.

The respondent in his comments, submitted to the Speaker on 27 February 1992, stated that the petition was made after considerable delay and was vitiated by political bias. He denied that any meeting took place on 24 December 1990 in which he along with the petitioner and five other members of the M.G.P. caused the alleged split and formed a new group, *i.e.* M.G.P. (Ravi Naik Group). It was also stated that the minutes of the said meeting were fabricated much later. The respondent also stated that on 14 January 1991 he was gheraoed by *Sarvashri* Ravi S. Naik, Shankar K. Salgaonkar and the petitioner and was forced to sign on a paper purporting to claim a split in the M.G.P. Legislature Party. This incident was reported to the Speaker and the Governor of Goa *vide* a letter dated 14 January 1991.

On the basis of material on record, the following issues emerged for consideration of the Speaker:

(i) whether the petition was liable to be dismissed *in limine* for laches, delay and limitation?

(ii) whether the petition was liable to be dismissed for non-compliance with the provisions of the Disqualification Rules?

(iii) whether annexures were not verified in prescribed manner?

(iv) whether the petition was liable to be dismissed *in limine* on the ground that M.G.P. (Ravi Naik Group) was never in existence and the petitioner had no *locus standi* to file the petition for disqualification?

Decision of the Speaker

After considering the facts and circumstances of the case and material on record, the Speaker, Shri Sheikh Hassan Haroon, gave his decision dated 22 October 1994 under the Tenth Schedule in the matter. As regards issue No.(i) regarding delay, the Speaker concluded that there was not a single statement in the petition regarding the cause for delay in filing the petition. He held that there was a deliberate and intentional delay in filing the petition. It was ironical that the petition was filed after the Writ Petition was filed in the High Court against Shri Ravi S. Naik and other members and after Supreme Court's decision on para 7 of the Tenth Schedule of the Constitution of India. The Speaker, therefore, decided this issue in affirmative.

As regards issue Nos. (ii) and (iii), the Speaker opined that verification of annexures etc. was faulty. These issues were also decided in positive. Insofar as issue No.(iv) was concerned, the petitioner admitted that the so-called M.G.P. (Ravi Naik Group) had merged with the Indian National Congress. Hence, the

Speaker opined that there was no Group called the M.G.P. (Ravi Naik Group) existing at the time of filing of the petition. The Speaker, therefore, decided the issue in affirmative. In his decision, the Speaker held as under:

> "Therefore, my findings to the issues at 1, 2, 3 and 4 are answered in affirmative. I, therefore, dismiss the petition. No order as to costs. "

Consequential Action

The Speaker's order was published in the Bulletin Part II and the Gazette of the Government of Goa.

Wilfred A. D'Souza and Others Case (Goa LA, 1998)

Petition for disqualification filed for having voluntarily given up membership of Indian National Congress – Interim relief awarded to petitioners – Writ petition in High Court against interim relief – High Court upheld power of Speaker to grant interim relief; but set aside interim order – Petitioners contended: with expulsion of 5 members, split-away Group fell short of one-third strength; split-away Group therefore, was not protected under para 3 of Anti-Defection Law – Respondents submitted: Speaker had an animus.towards them; split was genuine – Speaker held: expulsion of 5 members earlier invalidated split; respondents, therefore, were subject to disqualification – Petition allowed – Writ Petition filed in High Court – Speaker's order set aside – Special Leave Petition against High Court's decision filed in Supreme Court – Dissolution of Assembly

Facts of the Case

On 27 July 1998, Shri Pratapsingh R. Rane, M.L.A., gave a petition under the Tenth Schedule to the Constitution of India and the Members of the Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 (hereinafter referred to as Goa Assembly Anti-defection Rules, 1986) against *Sarvashri* Wilfred A. D'Souza, Dayanand G. Narvekar, Subash Ankush Shirodkar, Pandurang Bhatale and Pandu Vasu Naik, M.L.A.s, for having voluntarily given up membership of their original party, *i.e.* the Indian National Congress or the INC. In a separate petition, Dr. Wilfred Menezes Mesquita, M.L.A., also prayed for disqualification of the above said five respondents along with *Sarvashri* Chandrakant Chodankar, Carmo Pegado, Jagdish Acharya, Deo Mandrekar and Smt. Fatima D'Sa for having voluntarily given up their membership of the INC. As the two petitions raised identical issues, the Speaker considered them together.

In these petitions, the petitioners *inter alia* averred:

(i) that, *vide* his order dated 24 July 1998, the President of the Goa Pradesh Congress Committee, Shri Shantaram Naik, had expelled five of the afore-said respondents, namely *Sarvashri* Chandrakant Chodankar, Jagdish Acharya, Deo Mandrekar, Carmo Pegado and Smt. Fatima

D'Sa from the primary membership of the INC;

(ii) that, as per an intimation dated 25 July 1998, *Sarvashri* Joaquim Alemao and Arecio D'Souza, originally elected on the ticket of the United Goan Democratic Party, were also admitted into the INC raising the strength of the INC to 20;

(iii) that, *vide* intimation dated 27 July 1998, the ten members of the INC, including five members who were expelled earlier, announced their decision to effect a split in the INC and formed a separate Group, namely Goa Rajiv Congress;

(iv) that, the split-away Group could not claim protection under para 3 of the Tenth Schedule because with the expulsion of the five members *vide* order dated 24 July 1998, the total strength of the split-away Group was reduced to five, which was not one-third of the total membership of the INC, *i.e.* 20;

(v) that, on the basis of above contentions, the respondents had become subject to disqualification under the Tenth Schedule to the Constitution.

On perusing the petitions and annexure thereto it was verified that the petitions complied with the requirements of Rule 6 of the Goa Anti-Defection Rules, 1986. Notices were issued to each of the respondents for their comments.

On 28 July 1998, parties to the case were requested to appear before the Speaker for personal hearing. Though the Counsels for the petitioners were present, neither the respondents nor any person on their behalf appeared before the Speaker that day. At about 12.45 p.m., the petitioner, Dr. Wilfred Mesquita, through his Counsel, made an application requesting for an *ad-interim* relief. After hearing the Counsel of the aforesaid petitioner, *ad-interim* order was passed by the Speaker at about 1.30 p.m. and the matter was posted for confirmation of *ad-interim* relief on 29 July 1998.

In the meanwhile, respondents filed two Writ Petitions Nos. 296/98 and 297/98 before the High Court of Bombay, Panaji Bench. On 3 August 1998 the High Court pronounced its judgements on the said Writ Petitions wherein the Court upheld the power of the Speaker to grant *ad-interim* relief. However, for reasons set out in its judgement, the High Court quashed the *ad-interim* orders passed on 28 July 1998.

Subsequently, in their reply submitted to the Speaker, the respondents *inter alia* prayed that they apprehended bias insofar as the Speaker was concerned. Secondly, it was also contended that Shri Shantaram Naik's letter expelling the

members was manufactured and concocted and that their Group, *i.e.* Goa Rajiv Congress, was in fact, formed in the spirit of para 3 of the Tenth Schedule and enjoyed protection under it. The petitioners in their rejoinder contradicted all the contentions of the respondents.

On the basis of contentions made in the petitions and comments thereon by the respondents, the following issues emerged for consideration of the Speaker:

(i) whether the petitioners proved that the respondents had become subject to disqualification on ground of defection as contained in paragraph 2 of the Tenth Schedule of the Constitution of India?

(ii) whether a joint petition is not maintainable and individual petitions are to be filed against each respondent?

(iii) whether the petitions are not maintainable as the same do not contain concise statement of material facts on which the petitioners rely?

(iv) whether the petition is not maintainable as the same has not been verified in the manner laid down in Rule 6(6) of the Rules and Annexure thereto have not been signed and verified as contemplated in Rule 6(7) of the Disqualification Rules, 1986?

(v) whether Rules 6 and 7 of the Goa Assembly Anti-Defection Rules,1986 are mandatory in nature?

(vi) whether Adjudicating Authority has a bias and should not hear the petitions?

(vii) whether the respondents prove that the split in their original Political Party does not attract disqualification under the Tenth Schedule as provided in paragraph 3 of the Tenth Schedule of the Constitution of India?

Arguing for the petitioners, their Counsel *inter alia* submitted that the intimation sent by the respondents to the Speaker mentioned only of a separate Group within the Congress (I) Legislature Party. Firstly, there cannot be two Groups in a political party. Secondly, the resolution produced as one of the exhibits, was fraudulent, malafide and concocted. Besides, with the expulsion of the five members out of the total 10 members who claimed to have formed the new Group, the total strength of that Group was reduced to five, which was short of one-third of the total membership of the INC. The respondents were, therefore, not protected under para 3 of the Tenth Schedule. Regarding the alleged bias on the ground that the Speaker had an animus against the respondents, the Counsel termed it as a belated defense without any substance. The Counsel of the respondents, on the other hand, pointed out

some technical shortcomings in the petition as well as alleged political bias by the Speaker, etc.

Decision of the Speaker

Considering the matter in the light of the relevant provisions of the Tenth Schedule and having perused important court judgments, the Speaker, Shri Tomazinho Cardozo, gave his decision dated 14 August 1998 under the Tenth Schedule in the matter. The Speaker in his decision held that the contention that he had an animus was purely an after-thought. Regarding the maintainability of the petitions, he opined that the petitioners pleaded factual contents/averments and that the petitions were properly verified. As regards issues (ii), (iii), (iv), (v) and (vi), the Speaker held that the same were not proved and therefore answered them in negative.

Regarding issue (i), the Speaker held that respondents Nos. 6 to 10, *viz. Sarvashri* Chandrakant Chodankar, Carmo Pegado, Jagdish Acharya, Deo Mandrekar and Smt. Fatima D'Sa, who were earlier expelled by order dated 24 July 1998 by their Party Leader, by their act of forming a new Group had voluntarily given up their membership of their original political party. Similarly, formation of a new Group by respondents at Sl. Nos. 1 to 5, *viz Sarvashri* Wilfred A. D'Souza, Dayanand G. Narvekar, Subhash Ankush Shirodkar, Pandurang Bhatale and Pandu Vasu Naik, also put them under the relevant provisions of the Anti-defection Law. The issue was, therefore, answered in affirmative. Regarding issue (vii), the Speaker opined that the respondent failed to prove the split.

The Speaker in his decision held as under:

> "I declare that the respondents Nos. 1 to 5 in Disqualification Petition No. 1/98 and respondents Nos.1 to 10 in Disqualification Petition No. 2/98 have become subject to disqualification with effect from 27 August 1998 and as such are disqualified with effect from 27 August 1998 for being members of the Legislative Assembly of Goa in terms of article 191 (2) of the Constitution on account of their disqualification under the Tenth Schedule of the Constitution of India."

The Speaker's order was published in the Gazette of the Government of Goa and Bulletin Part II of the Assembly.

Subsequent Developments

The members who had been disqualified by the said order, filed a Writ Petition No. 317/98 in the Bombay High Court at Panaji Bench against the Speaker's order.

The High Court of Bombay, Panaji Bench heard the arguments of the petitioners as well as the respondents and passed the following order dated 7 September 1998:

> "In view of the above, even on the ground of principles of natural justice and the partisan attitude of the Speaker, the impugned order is liable to be set aside."

For the aforesaid reasons, the impugned judgement and order dated 14 August 1998 passed by the Speaker allowing Disqualification Petition No. 1/98 and 2/98 and disqualifying the said members *w.e.f.* 27 August 1998 for being members of the Legislative Assembly of Goa under article 191 (2) of the Constitution read with the provisions of the Tenth Schedule, was quashed and set aside. As regards the Disqualification Petition No. 3/98, the Court directed that in the event it being found to be maintainable, the same may be dealt with in the light of the observations made by the Court in their present judgment and in accordance with the law on the subject.

The petitioner, Shri Rane and Shri Mesquita, filed Special Leave Petitions before the Supreme Court and the matter was pending for disposal before the Supreme Court.

Pursuant to the proclamation issued by the President of India under article 356 of the Constitution of India and issued by the Government of India on 10 February 1999, the Legislative Assembly of the State of Goa was dissolved. In view of the dissolution of the Legislative Assembly of the State of Goa, the Special Leave Petition became infructuous.

Gujarat

Jaspal Singh Case (Gujarat LA, 1990)

Petition for disqualification for defying Party whip filed – Respondent took plea that in the absence of rules stipulated under the Tenth Schedule Speaker had no power to decide – Respondent given an opportunity to be heard in person – Rejecting respondent's plea the Speaker disqualified him – Writ Petition against the order of Speaker filed in Supreme Court – Stayed the order of the Speaker – Going by Supreme Court order Speaker stayed his earlier order till further order of Supreme Court – Dismissed and stay vacated.

Facts of the case

On 13 November 1990, Shri Dinsha Patel, MLA and Minister of Parliamentary Affairs filed a petition before the Speaker, Shri Himatlal Mulani, under the Tenth Schedule to the Constitution, against Shri Jaspal Singh, MLA, for allegedly defying the whip issued to him by his original Party, *i.e.*the Janata Dal Legislature Party during the voting on a Motion of Confidence in the Council of Ministers on 1 November 1990.

The petitioner submitted that the member was directed to vote in favour of the Motion moved by the Chief Minister, Shri Chimanbhai Patel, but he voted against it without obtaining prior permission of the party and since the act of the member had not been condoned by the party, Shri Jaspal Singh should be disqualified for being a member of the Gujarat Legislative Assembly under paragraph 2(1) (b) of the Tenth Schedule.

After ascertaining that the petition was in order, a copy of the same was forwarded to the respondent for his comments.

The respondent filed his comments on 11 February 1991. The main points made by the respondent were : (i) since no rules had been framed by the Speaker, as contemplated under paragraph 8 of the Tenth Schedule, no question referred to in paragraph 6 of the Tenth Schedule could be referred for the decision of the Speaker; (ii) Shri S.R. Bommai, President of the Janata Dal, by his letter dated

10 November 1990 had informed the Speaker about his party's decision to remove Shri Chimanbhai Patel from the leadership of Janata Dal Legislature Party and to suspend him from the primary membership of the Janata Dal; and that Shri Liladhar Waghela, who had served the whip on the respondent, had no power or authority to issue the whip/direction on his own, contrary to the policy of the national party; (iii) on 1 November 1990, the Speaker had directed him to withdraw from the House, and he had accordingly done so. Since a member who withdraws from the House on the direction of the Speaker cannot attend the sitting of the House that day or participate in the proceedings, his action of voting in the House was an invalid action and hence should not be taken on record; and the proceedings of the House of 1 November 1990 did not indicate that the respondent had voted against the Motion; and that Shri S.R. Bommai, President of the Janata Dal had condoned, within 15 days, the respondent's act of voting against the Motion moved by the Chief Minister.

The Speaker gave a personal hearing to the petitioner on 9 and 15 April 1991. Though the respondent had made a request for being given an opportunity to be heard in person, he was not present during the personal hearing by the Speaker in the matter.

The issue for determination before the Speaker was whether Shri Jaspal Singh, member of the Janata Dal Legislature Party, who had allegedly violated the party whip had incurred disqualifications under paragraph 2(1)(b) of the Tenth Schedule to the Constitution.

Decision of the Speaker

Taking into consideration all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule, the Speaker, Shri Himatlal Mulani, pronounced his decision in the matter on 5 June 1991. Gist of the decision is as follows:

(i) With regard to the contention of the respondent that in the absence of the rules, the Speaker could not take cognizance of any petition for disqualification, the Speaker observed that in many cases the Supreme Court had held that action taken under the statute in absence of the rules required to be framed, could not be treated as void.

(ii) With regard to the respondent's contention that Shri Waghela had no authority to issue the whip to him, the Speaker observed that this contention was not acceptable since as per the constitution of the Janata Dal Legislature Party, the Whip or the Leader of that Party was

empowered to issue such whips or directions to the members of the Legislature Party and the members were bound to obey such whips or directions.

(iii) With regard to the contention that the proceedings of the House dated 1 November 1990 did not indicate that the respondent had voted against the Motion moved by the Chief Minister, the Speaker observed that this argument of the respondent was unacceptable as he himself had stated in his comments that he was not liable to be disqualified under the Tenth Schedule because Shri S.R. Bommai, President of the Janata Dal had condoned his action of voting in the House against the Motion moved by the Chief Minister. Besides, Shri Bommai *vide* his letter dated 14 November 1990 informed the Speaker that he had condoned the action of the respondent in voting against the Motion. Thus, it was clear that the respondent had voted against the Motion moved by the Chief Minister.

(iv) With regard to the contention that as the respondent had withdrawn from the House on the orders of the Speaker, he was not entitled to attend the sitting of the House and to take part in the proceedings of the House that day and hence his action of voting against the Motion moved by the Chief Minister should not be taken into account, the Speaker observed that in this case as the member after withdrawal from the House returned to the House and took part in the proceedings of the House, he could not claim that his action in the House should not be taken into account. He had to face the consequence of his action.

(v) With regard to the member's main contention that he was not liable to be disqualified because Shri S.R. Bommai, President of the Janata Dal had condoned his action, the Speaker observed that "it is true that the action of the respondent has been condoned by the President of Janata Dal. But here the question arises as to ... "who can condone the action of the respondent ... In my opinion, if a whip/direction is issued by the political party, then the political party can condone the action of contravening the whip and if the whip/direction is issued by the person or authority authorised by the political party, then the action of contravening the whip/direction can be condoned by the person or authority and not by the political party. In the present case, the whip/ direction was issued by the Whip of the Janata Dal Legislature Party

and therefore, the action of the respondent of voting against the Motion moved by the Chief Minister should be condoned by the Whip of the Janata Dal Legislature Party. As the action of the respondent was not condoned by the Whip of Janata Dal Legislature Party, it cannot be said that the action of the respondent has been condoned under the Tenth Schedule."

The Speaker finally held as follows:–

(vi) "In the circumstance, I hold that since the respondent has voted against the whip/direction issued by the Whip of the Janata Dal Legislature Party without prior permission of the Janata Dal Legislature Party and the action of the respondent for voting against the whip has not been condoned by the Whip of Janata Dal Legislature Party who had issued the whip, the respondent stands disqualified under paragraph 2(1) (b) of the Tenth Schedule to the Constitution."

The following order was passed by the Speaker in the case:

"In exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the rules made thereunder, I, Himatlal T. Mulani, hereby declare that Shri Jaspal Singh, member of the Gujarat Legislative Assembly, has incurred disqualification for being a member of the Gujarat Legislative Assembly in terms of paragraph 2 (1) (b) of the said Schedule. Accordingly, Shri Jaspal Singh, MLA has ceased to be a member of the Gujarat Legislative Assembly with immediate effect and his seat shall thereupon fall vacant."

Consequential Action

The order of the Speaker was published in the Assembly's Bulletin Part II. Copies of the order were forwarded to the petitioner, the respondent and to the Leaders of the Janata Dal and Janata Dal (Gujarat) Legislature Party.

Subsequent Developments

Shri Jaspal Singh filed a writ petition against the order of the Speaker before the Supreme Court of India. The Supreme Court passed an interim order on 1 August 1991, stating that pending the hearing and final disposal by the court of the petition, Shri Jaspal Singh would be entitled to enjoy all the perks as a member of the House; without the right to participate in the proceedings of the House, and in case the petition failed, he would be liable to refund all the money which he would have drawn by virtue of the Court's order.

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

Subsequently, the Supreme Court considered the different petitions which were pending before it challenging the various provisions of the Tenth Schedule to the Constitution of India and struck down paragraph 7 of the Tenth Schedule *vide* its judgment in the Kihota Hollohan vs. Zachilhu and Others case given on 12 November 1991. In view of the Supreme Court's verdict, the Speaker, Gujarat Legislative Assembly decided to honour the interim order of the Supreme Court dated 1 August 1991, and issued orders accordingly on 13 December 1991.

Thereafter, the Supreme Court, by its order dated 12 November 1992, stayed the order of the Speaker dated 25 June 1991 disqualifying Shri Jaspal Singh as a member of the Gujarat Legislative Assembly. In view of the Supreme Court's order, the Speaker by his order dated 30 November 1992 stayed his earlier order dated 25 June 1991 till 12 January 1993, or till further orders of the Supreme Court.

Subsequently, on 8 May 1995, the Supreme Court, while considering the Petition for Special Leave to appeal and the application for stay moved by Shri Jaspal Singh, passed the following orders:–

> "Upon hearing Counsel for the appearing parties herein THIS COURT DOTH ORDER THAT petition for Special Leave to Appeal above mentioned be and is hereby dismissed and consequently this Court's Order dated 1 August 1991 and 12 November 1992 made in Interlocutory Application No. 1 above-mentioned be and are hereby vacated".

Janata Dal (Gujarat) Legislature Party Merger Case (Gujarat LA, 1992)

Claim for merger of Janata Dal (Gujarat) Legislature Party with Indian National Congress – Merger taken cognizance of – Members treated as belonging to the party they merged with.

On 7 June 1992, all the 66 members of the Janata Dal (Gujarat) Legislature Party merged with the Indian National Congress. The merger was taken cognizance of by the Speaker, Shri Himatlal Mulani, and the members of the Janata Dal (Gujarat) Legislature Party were treated as belonging to the Indian National Congress.

Yuva Vikas Party Merger Case (Gujarat LA, 1992)

Claim for merger of Yuva Vikas Legislature Party with Indian National Congress – Merger taken cognizance of – Members treated as belonging to the party they merged with.

On September 1992, the Yuva Vikas Legislature Party consisting of one member merged with the Indian National Congress Legislature Party. The merger was taken cognizance of and the member was treated as belonging to the Indian National Congress.

Sankarsinh Vaghela Case (Gujarat LA, 1996)

Claim for split in Bharatiya Janata Party (BJP) having 121 members – Splitaway group formed new party Consisting of 46 members – Petition for disqualification on the ground of voluntarily giving up of membership against some members of splitaway Group filed – Meanwhile representation from the then Chief Minister claiming that 13 members of splitaway group shown allegiance to the original party and willingness to remain with the party received – Deputy Speaker heard the case due to indisposition of the Speaker – Recognised the split – Decision of the Deputy Speaker challenged – Speaker reverted the decision – Subsequent to change in the political situation in the State – The leader of the new party became the Chief Minister. The new Speaker rescinded decision of earlier Speaker and did not take decision with regard to the split and disqualification petition – Assembly dissolved.

Facts of the Case

Consequent to the General Elections held in 1995, the Bharatiya Janata Party (BJP) comprising one hundred twenty one members formed the Government. On 1 August 1996, a member, Shri Sankarsinh Vaghela belonging to BJP claimed that a split had taken place in the party as a result of which 46 members of the party had formed a separate Group in the House known as Mahagujarat Janata Party. The leader of the Group subsequently requested the Speaker to recognise his group and allot separate seats for his members in the House. He further claimed that they were 46 members in number and as such constituted more than one-third of the total members of the original party as was required for statutory recognition to the split. Simultaneously, several petitions seeking disqualification of 21 members of Mahagujarat Janata Party were also received by the Speaker on the ground that some of the members shown in the list submitted by Shri Vaghela had not consented to join him and that they were still in the BJP. Hence, the splitaway group did not consist of prescribed one-third members for claiming the split.

Meanwhile, the Speaker also received a representation from the then

Chief Minister claiming that the names of 13 members mentioned in the above list had actually shown allegiance to the BJP. They expressed consent about their willingness to remain with the BJP were also submitted to the Speaker. While some of these 13 members had stated in their representation to the Speaker that their signatures appended to the list of the splitaway Group were obtained under duress some of them stated that they had never appended their signatures to the said list and their signatures appearing on the list were forged or tampered. The then Speaker was seriously ill at that time when such claims and counter claims were received. In the meantime, the Assembly was summoned for taking a vote of confidence on 3 September, 1996. Due to serious illness of the Speaker, Deputy Speaker presided over the sitting of the Assembly on that day.

Decision by the Deputy Speaker

As soon as the House met, the Deputy Speaker announced his decision to recognise the Mahagujarat Janata Party and adjourned the House *sine-die.*

Subsequent Developments

As the time elapsed, the political situation in the State changed and the Leader of the Mahagujarat Janata Party was sworn in as the Chief Minister with the support of the Congress Party. A new Speaker was elected. The new Speaker had rescinded to the earlier Speaker's decision and did not take any decision about the above mentioned split and subsequent disqualification petitions. Thereafter, the Assembly was dissolved due to withdrawal of support by the Congress Party and election to the Assembly was announced. Thus the decision on disqualification petitions and the question of recognizing the split under the Tenth Schedule could not be taken up and both the issues became infractuous on the dissolution of the Assembly.

Mahagujarat Janata Party Merger Case (Gujarat LA, 1997)

Claim for Merger of Mahagujarat Janata Party with Rashtriya Janata Party (Gujarat) – Merger taken cognizance of – Members treated as belonging to the party they merged with.

On 28 July 1997, 46 members of the Mahagujarat Janata Party merged with Rashtriya Janata Party (Gujarat). The merger was taken cognizance of by the Speaker and the members were treated as belonging to the Rashtriya Janata Party (Gujarat).

All India Rashtriya Janata Party Merger Case (Gujarat LA, 1999)

Claim for merger of All India Rashtriya Janata Party with Indian National Congress– Merger taken cognizance of – Members treated as belonging to the party they merged with.

On 20 July 1999, all the four members of the All India Rashtriya Ja....ta Legislature Party merged with the Indian National Congress Legislature Party. The merger was taken cognizance of by the Speaker, Shri Dhirubhai Shah, and the members were treated as belonging to the Indian National Congress Legislature Party.

Samajwadi Party (Gujarat) Merger Case (Gujarat LA, 1999)

Claim for merger of Samajwadi Party (Gujarat) with Bharatiya Janata Party – Merger taken cognizance of – Members treated as belonging to the party they merged with.

On 13 August 1999, the lone member of Samajwadi Legislature Party (Gujarat) merged with the Bharatiya Janata Legislature Party. The merger was taken cognizance of by the Speaker and treated the member as belonging to the Bharatiya Janata Legislature Party.

Haryana

Lok Dal Merger Case (Haryana LA, 1989)

Claim for merger of Lok Dal consisting of 60 members with Janata Dal – merger taken cognizance of – members treated as belonging to the party they merged with.

Facts of the Case

On 8 February 1989, Chaudhary Devi Lal claimed merger of his party *i.e.* Lok Dal, consisting of 60 members, with Janata Dal. He, therefore, requested the Speaker, Shri Harmohinder Singh Chatha to allow the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the relevant provision of the law and the Rules, the Speaker took cognizance of the merger on 17 February 1989 and the members were treated as belonging to the Janata Dal.

Vasu Dev Sharma and Others Case (Haryana LA, 1990)

Split in Janata Dal Legislature Party – Split away members formed new party – Recognised by Speaker. – Subsequently more members joined new party – Petition requesting for disqualification filed for voluntarily giving up of membership – Petition allowed – Speaker held : split a one-time process – Members disqualified – Challenged in High Court – Dismissed being void of merit

Facts of the Case

On 17 December, 1990, Shri Banarasi Dass Gupta, MLA and the Leader of the Janata Dal Legislature Party in the Assembly, filed a petition under the Tenth Schedule to the Constitution and the Rules framed thereunder, against *Sarvashri* Vasu Dev Sharma, Rao Ram Narain and Azamat Khan, MLAs praying for their disqualification in terms of the provisions of para 2(1)(a) of the Tenth Schedule.

The contentions of the petitioner were: (i) due to certain political developments which took place in the State in November 1990, 41 members of the Janata Dal Legislature Party claimed a split in the original political party and as a result a faction of the Janata Dal Legislature Party consisting of 41 members formed the Janata Dal (Socialist) Legislature Party. The complete documents relating to the split were submitted to the Speaker, Haryana Legislative Assembly, on 6 November 1990, who recognised the Group as Janata Dal(S) on 6 November 1990 and thereafter only 16 members remained in the original Janata Dal Legislature Party. Subsequently on 4 December 1990, the aforesaid three members belonging to the Janata Dal Legislature Party issued a public statement and defected and joined the Janata Dal (S) Legislature Party; (ii) the act of defection by the three members would automatically lead to their disqualification under the provisions of the Tenth Schedule as the Janata Dal Legislature Party had a split on 6 November 1990, whereas the three members defected from the party on 4 December 1990, which was clearly subsequent to the split on 6 November 1990; (iii) the split within the meaning of the Tenth Schedule is a one-time event and not a continuous process or factor. In view of this position, the split became an accomplished legal fact on 6 November 1990; (iv) since the split is a one-time

event, any further split would have to be determined with reference to the changed numerical strength and position or status of the Legislature parties. As after the 6 November 1990 split, the total numerical strength of the Janata Dal Legislature Party stood at 16, the three members who joined the Janata Dal (S) on 4 December 1990 did not constitute one-third of the strength of Janata Dal Legislature Party.

Subsequently, the Speaker, on 4 December 1990, received another letter dated 12 November 1990 from the Chief Minister, Shri Hukam Singh, wherein he informed that the three members had orally communicated their consent to him to the resolution passed by the 41 members regarding the formation of the Janata Dal (S). He also informed that these members could not attend the party's meeting (where the said resolution was passed) due to some unavoidable reasons. The Chief Minister also submitted necessary documents in respect of the three MLAs and requested that they may also be treated to be the members of the Janata Dal (S) with effect from 6 November 1990.

In the instant case, the three issues which arose for consideration and determination were: (a) whether the split which took place in the Haryana Janata Dal Legislature Party on 6 November 1990 was final or not?; (b) whether the oral consent of the three members was conveyed to the Leader of the Janata Dal (S) Legislature Party in the Haryana Vidhan Sabha and whether the subsequent confirmation in writing could be treated as consent to join the newly formed Janata Dal (S) with effect from 6 November 1990, the day on which the split in the Janata Dal took place and the said party as such was recognised as Janata Dal (S)?; (c) whether *Sarvashri* Vasu Dev Sharma, Rao Ram Narain and Azmat Khan had incurred any disqualification under the Tenth Schedule to the Constitution of India and the rules framed thereunder by the Haryana Legislative Assembly?

Decision of the Speaker

Taking into consideration all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule, the Speaker, Shri Harmohinder Singh Chatha, pronounced his decision in the matter on 26 March 1991. The gist of the decision is as follows:

(i) with regard to the issue whether the split that took place in the Haryana Janata Dal Legislature Party on 6 November 1990 was final or not, it was held that the same was final since a split has to be a one-time

affair*;

(ii) with regard to the issue whether the oral consent of the respondents to join the newly formed JD (S) could be taken cognizance of, it was held that the element of oral consent could not be given any weightage in the absence of any written/documentary evidence and therefore, could not be relied upon;

(iii) with regard to the issue whether the respondents had incurred disqualification under the provisions of the Tenth Schedule and the Rules made thereunder, the Speaker was of the view that inspite of giving ample opportunities to them to express/prove their view-point they failed to adduce any substantial or forceful evidence in support of their having joined JD(S) with effect from 6 November 1990. It was held that the respondents did not join JD(S) on 6 November 1990, but they did voluntarily join JD(S) Legislature Party subsequently. Therefore, this could be termed as a second split and the respondents did not constitute one-third strength of the Janata Dal Legislature Party. Hence, the respondents had incurred disqualification under the Tenth Schedule to the Constitution of India.

Consequential Action

The Speaker's order was published in the Haryana Gazette dated 26 March 1991.

Subsequent Development

Subsequently, Shri Vasu Dev Sharma challenged the order of the Speaker in the High Court of Punjab and Haryana. The Court *vide* its judgment dated 29 May 1997, while upholding the order of the Speaker dated 26 March 1991, dismissed the petition being void of any merit.

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* While coming to this conclusion, the Speaker endorsed the interpretations to this effect made by the Speaker (9LS) in the Janata Dal (S) case *vide* his decision dated 11 January 1991.

Kharaiti Lal Sharma Case (Haryana LA 1991)

Petition on the ground of voluntarily giving up membership of Bharatiya Janata Party filed – Respondent contended : due to ideological differences a split took place in the party and breaking away from his party he formed a new party: BJP(K) – Subsequently the new party merged with Indian National Congress Legislature Party – Speaker held: respondent not to be disqualified – Recognised the split, formation of new party and the merger – Decision challenged in the High Court – Speaker's decision quashed and the respondent disqualified since no split took place in National Party or the Haryana Branch of BJP.

Facts of the Case

On 31 July 1991, Shri Ram Bilas Sharma, MLA filed a petition before the Speaker, Shri Ishwar Singh, against Shri Kharaiti Lal Sharma, MLA requesting for his disqualification on account of voluntarily giving up his membership in the Bharatiya Janata Party and joining Congress-I Party.

The contention of the petitioner was that (i) elections of the Haryana Vidhan Sabha were held in 1991. The petitioner and the respondent were elected on the BJP tickets from Mahendergarh and Shahabad Assembly Constituencies, respectively; (ii) respondent defected from BJP on 29 July 1991 and joined the Congress-I Party. Thus, he voluntarily gave up his membership of the BJP on whose ticket he was elected as a member of the Haryana Vidhan Sabha. In support of his contention, the petitioner attached a copy of the press statement. It was contended that the act of the respondent automatically led to defection from membership of his original party under the provisions of the Tenth Schedule to the Constitution of India and the rules framed thereunder. It was, therefore, prayed that the respondent be disqualified from the membership of the Haryana Vidhan Sabha.

Decision of the Speaker

In response to the petitioner's averments, the respondent submitted his written reply on 10 December 1991, wherein he stated that due to ideological differences

he had formed a new legislature party in the name and style of the BJP (K) representing a faction arising as a result of split in his original political party and the claim for split was accepted by the Speaker by his orders of 17 July 1991 and subsequently, he made a claim for a merger of his original political party *i.e.* BJP(K) into Indian National Congress Legislature Party in Haryana Legislative Assembly *vide* his letter dated 24 July 1991. This was accepted by the Leader of the Congress-I Party as well as the Speaker under the law. He also stated that this act fell in the ambit of paragraphs 3 and 4 of the Tenth Schedule and as such the provisions of paragraph 2(1)(a) were not attracted.

After giving an opportunity of being heard, the petition was dismissed by the Speaker on 10 April 1992. In his detailed order he observed *inter alia* that since the BJP consisted of two members and the act of breaking away of the respondent from that party did not attract the provisions of para 2(1)(a) of the Tenth Schedule since the faction consisted of more than 1/3 of the total strength. This was a simple case of split and then merger which was not unconstitutional.

The order was published in the Haryana Gazette bearing the same date.

Consequential Action

A petition under articles 226 and 227 of the Constitution was filed by Shri Ram Bilas Sharma before the Punjab and Haryana High Court against the order of 10 April 1992 passed by the Speaker dismissing the petition of the petitioner seeking disqualification of Shri Kharaiti Lal Sharma. It was prayed in the petition that respondent No. 2 Shri Kharaiti Lal Sharma, MLA, be disqualified from the membership of the Haryana Vidhan Sabha on account of his having incurred disqualification under paragraph 2 and 6 of the Tenth Schedule to the Constitution of India and the Haryana Legislative Assembly (Disqualification of Members on ground of Defection) Rules, 1986.

The Punjab and Haryana High Court quashed the order of the Speaker of Haryana Legislative Assembly, Shri Ishwar Singh, dated 10 April 1992 and declared the second respondent Shri Kharaiti Lal Sharma as disqualified for being a member of the Haryana Legislative Assembly. The full Bench Judgment of the Court observed that Shri Kharaiti Lal Sharma failed to mention anywhere that his decision to breakaway from the original party was due to split in the national party or the Haryana Branch but only ideological difference was shown as reason for such split by him. The Court also observed that in the absence of a split in the original political party, no member of that political party can claim to form a separate

legislature party. A legislature party is not a separate entity. It is only a wing within the original political party. The disqualification of the second respondent was ordered to come into effect from the date of the order of the Speaker, *i.e.* 10 April 1992 and accordingly the writ petition was allowed and the second respondent was declared disqualified *w.e.f.* 10 April 1992 following necessary consequences of the order dated 29 May 1997.

Janata Dal Merger Case (Haryana LA, 1991)

Claim for merger by the lone member of newly formed Janata Dal (H) with the Indian National Congress – Merger taken cognizance of - Member treated as belonging to the party he merged with.

Facts of the Case

On 20 December 1991, Shri Hari Singh, the lone member of newly formed Janata Dal (H), claimed a merger of his party with Indian National Congress. He, therefore, requested the Speaker, Shri Ishwar Singh to treat him as belonging to Indian National Congress

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the relevant provision of the law and the Rules, the Speaker took cognizance of the merger on 27 December 1991 and the member was treated as belonging to Indian National Congress

On the same day, i.e. on 20 December 1991, the lone member of the newly formed Janata Dal (H), Shri Hari Singh claimed to have merged with the Indian National Congress and the merger was recognised by the Speaker on 27 December 1991.

Om Prakash Sharma Case (Haryana LA, 1993)

Member expelled from Haryana Vikas Party – Declared 'unattached' – Joined another party – Petitions praying for disqualification filed – Dismissed – Held that no bar on 'unattached' member from joining any other legislature party – Challenged in High Court – Dismissed

Facts of the Case

Dr. Om Prakash Sharma was elected to the Haryana Legislative Assembly on the ticket of the Haryana Vikas Party in the general election held in 1991. Later on, he was expelled from the party. The President of the Haryana Vikas Party as well as the Leader of the Haryana Vikas Legislature Party intimated the Speaker, Haryana Legislative Assembly Shri Ishwar Singh, about the expulsion of Dr. Om Prakash Sharma from the party with effect from 22 November 1992.

The Speaker, after carefully considering the well established parliamentary practice and also the past precedents in the Haryana Legislative Assembly, decided to treat Dr. Om Prakash Sharma as an 'unattached' member *vide* his order dated 3 December 1992. Dr. Om Prakash Sharma was also allotted a separate seat, outside the block of seats of the Haryana Vikas Party, in the Assembly. Thereafter, the Leader of the Indian National Congress Legislature Party addressed a letter dated 17 February 1993 to the Speaker intimating about his party's acceptance of the request made by Dr. Om Prakash Sharma *vide* his letter dated 16 February 1993 to be permitted to join the Indian National Congress Legislature Party.

Subsequently, the respondent met the Speaker personally and handed over his letter dated 24 February 1993 intimating about his joining the Indian National Congress in the Assembly. He also made a request for being treated as a member of the Indian National Congress in the Assembly.

On 29 April 1993, a petition was filed by Shri Karan Singh Dalal, MLA and Chief Whip of the Haryana Vikas Party, under the provisions of the Tenth Schedule to the Constitution and the Rules framed thereunder, praying for disqualification of Dr. Om Prakash Sharma from the membership of the Assembly.

The contention of the petitioner was that Dr. Om Prakash Sharma, who was treated as an unattached member after his expulsion from the Haryana Vikas Party had joined another party, *viz.* the Indian National Congress Legislature Party. The

petitioner enclosed with his petition necessary documents in support of his allegations.

Another identical petition dated 23 June 1993 was filed by Shri Chhattar Singh Chauhan, MLA, for disqualification of Dr. Sharma on the same grounds as mentioned above. The petitioner also enclosed with the petition, copies of the same documents which had been enclosed by the first petitioner with his petition.

Both the petitions, along with the enclosures, were forwarded to Dr. Om Prakash Sharma, *vide* letters dated 31 August 1993 for his comments as required under Rule 7(3) of the Haryana Legislative Assembly (Disqualification of Members on ground of Defection) Rules, 1986. The comments of the respondent dated 12 October 1993 were received on 13 October 1993.

Defending his stand, the respondent submitted that he was expelled from the Haryana Vikas Party on 22 November 1992. The communication to this effect was sent to the Speaker. After taking into consideration the well established parliamentary practice and precedents prevailing in the Haryana Legislative Assembly, the respondent was treated as an unattached member by the Speaker *vide* his order dated 3 December 1992. Subsequently, the respondent joined the Indian National Congress Legislature Party and his joining was also accepted by the leader of that party. He joined the party because he found it difficult to serve the people of his constituency effectively without being in a proper political party. He also submitted that under the law, there is no provision where a member who has been expelled by his political party, is debarred either from functioning as an unattached member or from joining any other political party.

Decision of the Speaker

Both the petitions were jointly considered and after taking into consideration all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule, the Speaker, Shri Ishwar Singh, pronounced his decision in the matter on 1 December 1993.

The Speaker in his decision held as follows:

(i) The Haryana Vikas Party had expelled Dr. Om Prakash Sharma from the party for 6 years and he ceased to be a member of that party; (ii) As Dr. Om Prakash Sharma was declared an unattached member, he could not as such be considered as an Independent member as envisaged under the provisions of the Tenth Schedule to the Constitution; (iii) Therefore, the provisions relating to an independent member were not applicable or attracted in this case; (iv) This fact was conclusively established that the respondent had not voluntarily given up the membership of his political party but he was expelled. Thus, the provisions of para

2 were also not attracted in this case; (v) The respondent joined the Indian National Congress Legislature Party, as stated by him, as he was declared as an 'unattached' member and hence he was not able to serve his constituency properly in the capacity of an 'unattached' member. A member who had been expelled from his party could not be said to represent the political party in the Legislature. His case for disqualification was not, therefore, covered under the Tenth Schedule to the Constitution of India. As the Tenth Schedule relates to disqualification of members, therefore, it would have to be construed very strictly. Accordingly, the respondent cannot be disqualified; (vi) There is no bar under the provisions of the Tenth Schedule which prohibits an unattached member from joining any other Legislature Party already existing in the House.

The following order was passed by the Speaker in this case:

> "After careful perusal and examination of the entire material available on record alongwith petition in question and the replies thereto, the undersigned is of the considered view that no *prima facie* case has been made out by the petitioners under para 2 of the Tenth Schedule to the Constitution of India. There is no force in both the petitions and the same are hereby dismissed."

Consequential Action

Shri Karan Singh Dalal, MLA and others had filed a petition under articles 226 and 227 of the Constitution of India, before the High Court of Punjab and Haryana praying for issuance of a writ in the nature of *mandamus,* directing the respondents No. 1 and 2 *i.e.* the Speaker to decide the petition filed by *Sarvashri* Karan Singh Dalal and Chhattar Singh Chauhan and seeking disqualification of the respondent no. 4, *i.e.* Dr. Om Prakash Sharma. The case came up for hearing on 4 November 1993 and was dismissed as infructuous as a statement had been made on behalf of the Speaker that the matter would be decided within one month by the Speaker.

Janata Dal Merger Case-II (Haryana LA, 1994)

Claim for merger of lone member party, Janata Dal with Indian National Congress - merger taken cognizance of - member treated as belonging to the party he merged with.

Facts of the Case

On 25 February 1994, Smt. Chandravati, MLA claimed a merger of her lone member party *i.e.* Janata Dal with Indian National Congress. She, therefore, requested the Speaker, Shri Ishwar Singh to allow the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the relevant provision of the law and the Rules, the Speaker took cognizance of the merger on 26 February 1994 and the member was treated as belonging to Indian National Congress.

All India Indira Congress Party (Tiwari) Merger Case (Haryana LA, 1997)

Claim for merger of All India Indira Congress Party (Tiwari) consisting of 3 members, with Indian National Congress – Merger taken cognizance of – Members treated as belonging to the party he merged with.

Facts of the Case

On 14 January 1997, Shri Virender Singh, MLA along with two other members claimed a merger of their party i.e. All India Indira Congress Party (Tiwari), consisting of three members, with Indian National Congress. They, therefore, requested the Speaker, Shri Chhatter Singh Chauhan to allow the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the relevant provision of the law and the Rules, the Speaker took cognizance of the merger on 6 February 1997 and the members treated as belonging to Indian National Congress.

Samata Party Merger Case (Haryana LA, 1997)

Claim for merger of Samata Party, consisting of 21 members, with Haryana Lok Dal (Rashtriya Legislature Party) – Merger taken cognizance of – Members treated as belonging to the party they merged with.

Facts of the Case

On 9 December 1997, Shri Om Prakash Chautala, MLA and 21 other members claimed merger of their party i.e. Samata Party, consisting of 21 members with Haryana Lok Dal (Rashtriya Legislature Party). They, therefore, requested the Speaker, Shri Chhatter Singh Chauhan to allow the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the relevant provision of the law and the Rules, the Speaker took cognizance of the merger on 19 January 1998 and the members were treated as belonging to Haryana Lok Dal (Rashtriya Legislature Party).

Charan Dass Shorewala and Vinod Kumar Mariya Case (Haryana LA, 1997-98)

Members expelled from Samata Party – Treated 'unattached' – Petition praying for disqualification for voluntarily giving up of membership filed – Pending the Speaker's decision civil writ petition in High Court filed – Adjourned with the direction to expedite – Challenged in Supreme Court through Special Leave Petition – Disposed of – Held: High Court order not to survive – Interim application before Supreme Court – Directed to decide within a timeframe – Speaker dismissed the petition as having no merit – Challenged in High Court – Speaker's order overruled – Members Disqualified – Challenged before Supreme Court – High Court's Order Stayed

Facts of the Case

Shri Virender Pal, MLA filed two petitions under the Tenth Schedule to the Constitution and Rules made thereunder one against Shri Charan Dass Shorewala, MLA and the other against Shri Vinod Kumar Mariya, MLA for having voluntarily given up membership of their original political party, *viz.* Samata Party.

Both the petitions were identical in nature and raised common questions of fact and law.

In these petitions, it was alleged that (i) the respondents, *i.e.* Shri Charan Dass Shorewala and Shri Vinod Kumar Mariya were elected to Haryana Legislative Assembly on the Samata Party symbol. The Party had, in all, 24 members in the Assembly. In the meeting of the Samata Party Legislature Party, Shri Om Prakash Chautala was elected as Leader of the Party, who was subsequently designated as the Leader of the Opposition in the Haryana Legislative Assembly. After some time, as the respondents indulged in anti-party activities, they were expelled from the Samata Legislature Party. The Speaker was also informed about the expulsion. After expulsion, both the respondents were treated as unattached members by the Speaker and allotted separate seats in the House, while the Samata Party legislators were allotted 22 seats. It was also stated that Shri Chautala being the leader of the Samata Legislature Party wrote a letter to the

Speaker protesting against the allotment of only 22 seats. It was also clearly mentioned in the letter that these two members might be deemed to be the members of the Samata Legislature Party even though they were expelled from that Party; (ii) that these members relinquished their membership of the Samata Legislature Party voluntarily and crossed over to the ruling alliance and accepted ministerial berths in the Government on 14 January 1997. This amounted to defection since as members of the Cabinet, the respondents were bound to follow the policy of the ruling alliance which was different from that of the Samata Party; and (iii) it was further alleged in the petition that the order of the Speaker treating these members as unattached members was in violation of law as laid down by the Supreme Court in G. Vishwanathan versus Speaker, Tamil Nadu Legislative Assembly Case (AIR 1996 SC 1060).

The respondents filed their comments on 31 July 1997. The respondents while refuting allegations made in the petition submitted as follows:

(i) That the Samata Party merged with the Samajwadi Janata Party (Rashtriya) on 18 June 1996 along with 21 members out of the 24 MLAs of the Samata Party;

(ii) That two respondents and one Shri Azad Mohammad being three out of the 24 MLAs did not accept the merger and opted to function as a separate group;

(iii) That from the date of merger, *i.e.* 18 June 1996, the said group had to be deemed to be a political party to which the two respondents and Shri Azad Mohammad belonged;

(iv) That consequently from the date of merger there were two separate entities namely the new group of which the two respondents and Shri Azad Mohammad were members and Samajwadi Janata Party (Rashtriya) headed by Shri Chandra Shekhar with which the dominant group of the Samata Party led by Shri Chautala had merged;

(v) That consequently the leadership of one party/group had no disciplinary control over the other and therefore the expulsion order passed by Shri Chautala was without any legal basis or authority;

(vi) On the same logic, sub-para (1) of paragraph-2 of the Tenth Schedule had no application to the facts of this case;

(vii) That in the circumstances of this case, the question of the respondents having voluntarily given up the membership of the Samata Party did not and in fact could not arise; and

That the respondents act of joining the Cabinet led by Choudhary Bansi

Lal, did not constitute defection for purposes of the Tenth Schedule.

The petitioner also filed rejoinders to the written statements filed by the respondents and denied the pleas taken up by the respondents about the merger of the Samata Party with the Samajwadi Janata Party (Rashtriya). The main issues that came up for decision were:

(i) whether the respondents were disqualified for being members of the Haryana Legislative Assembly within the meaning of paragraph 2 of the Tenth Schedule to the Constitution of India ?

(ii) whether mere acceptance of the Office of a Minister in a coalition Government can constitute a defection under para 2 (1) (a) of the Tenth Schedule of the Constitution of India particularly when a member occupying the Office was a member of the separate Group within the meaning of para 4 (1) (b) of the Tenth Schedule of the Constitution of India ?

(iii) whether the Samata Party had merged with the Samajwadi Janata Party (Rashtriya). If so, whether the respondents had not accepted the merger and had opted to function as a separate Group with Shri Azad Mohammad ?

(iv) in the event of issues at (iii) being answered in affirmative, the provisions of paragraph 4 of the Tenth Schedule of Constitution of India could be said to be applicable, in such an eventuality whether the petition would be maintainable ?

(v) when admittedly the Samata Party led by Shri Om Prakash Chautala of which 21 members out of 24 members of Legislative Assembly had merged with Samajwadi Janata Party (Rashtriya) on 18 June 1996 and when admittedly *Sarvashri* Charan Dass Shorewala, Vinod Kumar Mariya, members of the Legislative Assembly elected on the Samata Party ticket did not accept the merger, whether Shri Om Prakash Chautala could have passed an expulsion order against these members on 25 October 1996 ?

(vi) whether the Tenth Schedule contemplated such a situation where the original political party might have merged with another political party and yet its legislative party could remain a separate entity not influenced by the merger of the original political party? and

(vii) whether a whip would operate upon these two expelled members?

In the meantime, the petitioner filed a Civil Writ Petition in the High Court of Punjab and Haryana on 21 February 1997. This petition was subsequently amended

on 3 March 1997. In this petition, a prayer to the effect that a direction in the nature of a declaration be issued that the two respondents were not entitled to style themselves as "unattached members" of the Haryana Legislative Assembly and that the Speaker could not declare them as "unattached members." The Speaker was also made a party to these writ petitions. The High Court of Punjab and Haryana disposed the petition *vide* its order dated 6 August 1997 and adjourned the matter to 20 October 1997 to enable the Speaker to dispose of the petitions for disqualification under the Tenth Schedule and to make available the final order/decision of the Speaker under the Tenth Schedule to the Constitution.

The Court further observed:

> "We also impress upon the Speaker the importance of the petition and an early disposal of the same. The Speaker may consider the feasibility of proceeding with the matter on day-to-day basis. Counsels representing the petitioner and respondents undertook before us that their clients will take all steps before the Speaker for an early disposal of the petition and that they will not resort to any dilatory proceedings".

Against the orders of the High Court, a Special Leave Petition was filed by the Speaker in the Supreme Court. The grievance made therein was that the Supreme Court had in its Constitution Bench Judgement in *Kihota Hollohan vs. Zachilhu Case* (AIR 1993 SC 412) limited the scope of a judicial review in respect of orders passed by the Speaker under para 6 of Tenth Schedule to the Constitution of India and that directions of the High Court to dispose of the matter before a particular date and make judgment of the Speaker available to the High Court by that date was in conflict with the judgment of the Supreme Court. The Supreme Court passed the following orders in the said SLP No. 18083 of 1997:

> "Shri Gopal Subramanium, the learned senior Counsel appearing for the petitioner states that the petitioner will take up the petition regarding disqualification and dispose of the same expeditiously. In view of the said statement, the directions given by the High Court regarding the order being passed before 20 October 1997 and to make available the final order of the Court will not survive. The special leave petition is disposed of accordingly."

As a result of the order of the Supreme Court, the bindings placed by the High Court on the Speaker ceased to be operative.

Sometime later, an interim application was filed by way of SLP No. 18093/97 by Dr. Virender Pal, MLA, in the Supreme Court of India. It was alleged in the said interim application that the proceedings had been delayed by the Speaker and the

directions be issued to the Speaker to dispose of the matter as early as possible. The interim application came up for hearing on 4 May 1998, whereupon the Court directed the Speaker to decide the petitions within a time frame/stipulated period.

Decision of the Speaker

The Speaker, Haryana Legislative Assembly, Shri Chhattar Singh Chauhan, decided both the petitions together *vide* his decision under the Tenth Schedule dated 26 June 1998.

While dealing with the issues involved in the case, on the issue of merger, the Speaker observed:

> "In the light of the facts of this case, I am convinced that at no stage of the proceedings did the petitioner dare to deny categorically the fact of the merger of his party with the Samajwadi Janata Party (Rashtriya) on 18 June 1996. From a careful analysis of the rejoinders submitted by the petitioner it is clearly noticeable that they did not at all expressly or impliedly deny the fact of merger of the Samata Party with Samajwadi Janata Party (Rashtriya). I presume, the petitioner perhaps wisely avoided to deny the fact of merger. After all, the fact of merger was something which could not be kept as a secret as it would appear from the photographs carried in the press and the statements published therein, it is a publically known fact that the Samata Party in Haryana had ceased to exist and it was in fact, a part of the Samajwadi Janata Party (Rashtriya). Accordingly, the specific denial of the fact of merger might have rendered the petitioner liable for an action for perjury and, therefore, he could not have denied that fact in view of overwhelming evidence in support of fact of merger".

Having considered the pleadings of the parties, the material brought on record, the legal position and the arguments of the Counsel for the parties, the Speaker further observed:

> "I am firmly of the view that the Samata Party led by Shri Om Prakash Chautala in the State of Haryana had merged with the Samajwadi Janata Party (Rashtriya) on 18 June 1996. The merger had the support of 21 members of the Haryana Vidhan Sabha and the two respondents and Shri Azad Mohammad, not having accepted the merger, constituted a Group within the meaning of para 4 of the Tenth Schedule and this Group became the political party to which three members belonged from the time of merger of the Samata Party. I also record my finding that the

order of expulsion passed by Shri Om Prakash Chautala against the two respondents on 25 October 1996 was without any effect since on that date the Samata Party of which Shri Om Prakash Chautala was the leader had merged with the Samajwadi Janata Party (Rashtriya) and had, therefore, no control over the two respondents who did not fall in line with him and who did not accept the merger. I also record a finding that the merger had the support of more than 2/3rd of the strength of Legislature Party of the Samata Party and, therefore, the same was valid and consequently, the provisions of para 2 (1) (a) were not applicable either to those who supported the merger or those who declined to accept the same. The present petition therefore, did not lie and was not at all maintainable. Issue Nos. 3 and 4 are accordingly decided in favour of the respondents and against the petitioner".

On the issue whether Tenth Schedule to the Constitution contemplates a situation when the original political party may merge with another political party and its legislature party can remain a separate entity, the Speaker observed as follows:

"A combined reading of paras 1 (b) and (c) (of the Tenth Schedule) makes it clear that the Legislature Party belongs to the political party and that the Original Political Party in relation to a Member of a House is the political party to which a member belongs for purposes of sub-para 1 of para 2. It is, therefore, difficult to conceive a situation where a political party may merge with another political party and severe its relationship with Legislature Party and yet Legislature Party continuing to belong to the party which had already merged with another political party."

"When the Tenth Schedule speaks of split and merger contemplated by paras 3 and 4, it does not speak of a split or merger in the Legislature Party but it speaks of split and merger in the original political party."

"This would show that the split and merger if these take place, have to take place not in the Legislature Party but in the original political party... The fact that twenty-one out of twenty-four members of the Vidhan Sabha became part and parcel of the Samajwadi Janata Party (Rashtriya) from 18 June 1996 till 6 October 1997, *i.e.* when they resigned from that party to form the Haryana Lok Dal (Rashtriya) proves that the Legislature Party of the Samata Party had also merged alongwith the original political party with the Samajwadi Janata Party (Rashtriya). It is not, therefore, correct even factually to say that the Legislature Party of the Samata Party had not merged with the Samajwadi Janata Party

(Rashtriya) as has been pleaded by the petitioner".

"I hold that the Tenth Schedule of Constitution does not contemplate a situation when the original political party may merge with another political party and yet its Legislature Party can remain a separate entity, not influenced by the merger of original political party. I further hold that if the original political party merges with another political party, the Legislature Party of that original political party, has to decide whether it supports the merger or opposes it. If two-third members of the Legislature Party support the merger, the merger is complete, valid and takes effect as contemplated by paragraph 4 of the Tenth Schedule of the Constitution of India".

" I further hold that disqualification contemplated by paragraph 2 (1) (a) of the Tenth Schedule results on account of voluntarily giving up the membership of the party and not the Legislature Party and since, in the present case, the Samata Party has merged with the Samajwadi Janata Party (Rashtriya), the consequences of paragraph 4 having ensured the application of paragraph 2(1) (a) was excluded".

On the issue whether mere acceptance of the office of a Minister by respondents in a coalition Government can constitute a defection under para 2(1) (a) of the Tenth Schedule, Speaker held as follows:

"In the circumstances of the case when the respondents are held to be members of Group who did not accept the merger under para 4 of Tenth Schedule, the question of their having voluntarily given up the membership of the Samata Party does not arise. Otherwise also the provisions of para 2 (1) (a) of the Tenth Schedule is not applicable in the present case because accepting ministerial berth in a coalition Government that too by persons who did not accept merger does not amount to voluntarily giving up membership of the party. Accordingly, this issue is also decided in favour of the respondents and against the petitioner".

On the issue whether order could have been passed by Shri Om Prakash Chautala expelling the respondents, the Speaker held as follows:

"Since the Samata Party had merged with the Samajwadi Janata Party (Rashtriya) on 18 June 1996 and the merger having been not accepted by the respondents, no order of expulsion could have been passed against the two respondents on 25 October 1996."

On the issue whether whip would operate upon expelled members, the Speaker held as follows:

"So far as whip is concerned, the petition originally filed did not raise any question of violation of whip and the only ground taken therein was that the respondents had voluntarily given up the membership of the Samata Party. It is not, therefore, necessary for me to go into this issue as it does not arise from the pleadings of the Party. The mere fact that a passing reference had been made in the affidavit filed by the petitioner cannot be taken into account without a proper plea to that effect in the petition."

The Speaker finally passed the following order:

"In view of my findings... I hold that the respondents in the two petitions *Sarvashri* Charan Dass Shorewala and Shri Vinod Kumar Marya have not incurred disqualification under paragraph 2(1)(a) of the Tenth Schedule of Constitution of India read with Rule 6 of the Haryana Assembly (Disqualification of members on ground of Defection) Rules 1986... the petitioner is not entitled to any relief in either of the two petitions filed by him against Shri Charan Dass Shorewala and Shri Vinod Kumar Marya. Both petitions are accordingly dismissed."

Consequential Action

The decision of the Speaker was published in the Haryana Government Gazette (Extraordinary).

Subsequent Development

A writ petition was filed by Dr. Virender Pal, MLA challenging the order of the Speaker dated 26 June 1998. It was prayed that orders of the Speaker be quashed and the respondents, *i.e. Sarvashri* Charan Dass Shorewala and Vinod Kumar Mariya, be disqualified from the membership under the Tenth Schedule to the Constitution of India and the Rules framed thereunder. The High Court of Punjab and Haryana *vide* its judgement dated 21 July 1999 accepted the writ petition and quashed the order passed by the Speaker and held the respondents as disqualified for being members of the Haryana Legislative Assembly under the provisions of the Tenth Schedule to the Constitution of India.

The judgment and order dated 21 July 1999 passed in CWP No. 14093/98 of the High Court of Punjab and Haryana was challenged in Supreme Court of India by Shri Charan Dass Shorewala and another through SLP No. 10027 of 1999. The Supreme Court of India while granting the leave to the petition pending further orders stayed the order of the High Court *vide* its order dated 27 July 1999.

Karan Singh Dalal Case (Haryana LA, 2003)

Petition for disqualification on ground of voluntarily giving up membership of original party: Republican Party of India (RPI) and forming/ joining the Haryana Republican Party – Held – Valid under paragraph 2 of Tenth Schedule – Member disqualified – Writ Petition filed with the S.C. – Court stayed the operation of the order of the Speaker excepting the member's right to vote.

Facts of the Case

On 31 December 2003, Shri Jasbir Mallour, MLA, filed a petition to the Speaker, Shri Satbir Singh Kadian under paragraph 2(1)(a) of the Tenth Schedule and the Rules framed thereunder against Shri Karan Singh Dalal, MLA, for voluntarily giving up membership of his original party, the Republican Party of India (RPI) and forming/joining the Haryana Republican Party. The petitioner stated that the respondent was the sole constituent of the Legislature party of the RPI and that there was no split in the Party. In support of his statement, the petitioner had submitted the press statements given by the respondent in this respect.

Notice was issued to the respondent asking him to file his reply within one month from the date of issue of the notice. The respondent was given sufficient opportunities to file his reply to the notice and ultimately he was also granted an opportunity of personal hearing along with the assistance of an advocate, if desired so. The respondent appeared for a personal hearing on 11 June 2004 along with his Counsel and submitted an application seeking permission to inspect the records and also for supply of certified copies of the documents filed along with the petition. Requisite permission was granted. He was asked to file his comments on 14 June 2004 and also to appear personally. On the date, instead of filing his reply, the respondent submitted another application seeking permission to inspect the files of some other cases and also put query regarding the procedure adopted in those cases in respect of evidence, etc. However later, on the same day, he forwarded another application seeking permission to see some more documents. The Speaker *vide* his order of 14 June 2004 rejected the request on the ground that the certified copies of documents/records as requested for, did not relate to the instant case.

The respondent was asked to file his reply by 15 June 2004, which he did.

In his reply by way of affidavit dated 15 December 2004, the respondent stated that the workers/leaders of Haryana Republican Party of India had decided to cause a split in the original political party *i.e.* RPI on 21 December 2003 at Palwal by passing a unanimous resolution in this regard and that the Election Commission of India, after receipt of the above mentioned resolution dated 21 December 2003 had registered a new political party i.e. the Haryana Republican Party w.e.f. 26 February 2004 under Section 29A of the Representation of People Act, 1951.

During his personal hearing on 15 June 2004, he claimed a split in the RPI. He also submitted that he was seeking to contest for the Rajya Sabha elections scheduled for 28 June 2004, so the case be adjourned. No supporting documents were, however, submitted by him in this respect. Finally, the decision on the case was reserved for 23 June 2004.

Decision of the Speaker

After taking into consideration the facts, circumstances of the case, the various applications of the petitioner and the respondent and the reply submitted by him, the relevant Constitutional provisions, the Tenth Schedule and the Rules, the Speaker, pronouncing his judgement in the case said that by the 97th Amendment Act, 2003 Para 3 of the Tenth Schedule to the Constitution had been omitted and the 97th Amendment Act came into force in January, 2004 and that after the latest amendment to the Constitution, a split in the original political party is now not a ground on which disqualification of a member is saved. However the present case is being decided on the basis of the law as it was on the date of the alleged split in the RPI and the formation of the Haryana Republican Party *i.e.* 21 December 2003, he added.

He further observed that in order to be clear about the concept of "Original Political Party" *vis-à-vis* a "Legislature Party" while dealing with the question regarding "split", it could be useful to refer to the following observation of the Full Bench of the Hon'ble Punjab & Haryana High Court in CWP No.6662 of 1992, "Ram Bilas Sharma, MLA *vs.* the Speaker, Haryana Vidhan Sabha and another:

> "In the absence of a split in the original political party, no member of that party can claim to form a separate Legislature party. A legislature party is not a separate entity. It is only a wing within the original political party".

He further observed that the respondent takes shelter of Para 3 to claim that a split had taken place in his original political party. In other words, as per the

provisions of Para 2 of the Tenth Schedule, disqualification is attracted immediately once a member of the House voluntarily gives up the membership of his original political party and joins another political party. However, Para 3 steps in as an exception, to state that such a defection from the original political party would not invite disqualification under Para 2, in case there was a split in the original political party.

Dwelling further on the point he said, "in these circumstances, the onus of proving that a split had taken place in the original political party clearly rests upon the respondent as he wants to take advantage of Para 3 in his defence in order to save himself from the disqualification under Para 2. No doubt that one of the requirements of Para 3 of having at least one-third members of the Legislative Parties as representing the breakaway group at the national/State level, is not attracted in the case of the respondent, as he is the sole member constituting the Legislature party of the RPI in the Haryana Vidhan Sabha, yet it is for the respondent to bring on record clear evidence which would prove that a split had indeed taken place in his original political party. Since it is the respondent who is taking the plea of a split, therefore, the burden to prove such a split is upon him. It is not sufficient for the respondent to only make a "claim" regarding a split, but it is necessary for him to prove it".

Referring to the judgement of the Supreme Court in Ravi S. Naik vs. Union of India, the Speaker observed that "it is clear that whosoever takes the plea of a split has also to bear the burden of proving it".

The Speaker also observed that "it was incumbent upon the respondent to satisfy me about the genuineness of the claimed split in his original political party, namely the RPI. However, the respondent has miserably failed to satisfy me in this regard. It has been admitted by the respondent himself that he formed/joined a new political party on 21 December 2003. No valid proof or evidence has been placed on the record by the respondent to show that a split had indeed taken place in his original political party i.e. RPI on 21 December 2003 or at any other time. Thrice, the respondent had been asked the names and addresses of the office bearers of the original political party at the national and State level as well as the names and addresses of the office bearers of the RPI who attended the meeting in which the resolution dated 21 December 2003, was passed. However, despite ample opportunity no satisfactory response or reply in this regard had been given by the respondent. In absence of this basic evidence, it cannot be adduced that a genuine split had taken place in the RPI. Since it was only in case the original political party of the respondent had suffered a split, that Para 3 is attracted, the benefit of Para 3 of the

Tenth Schedule is not available to the respondent. Consequently, the disqualification of the respondent under Para 2(1)(a) is clearly made out."

The Speaker, while observing that the respondent had tried to build support for his claim regarding split in the RPI from the letter dated 1 March 2004 of the Election Commission by which the Haryana Republican Party had been registered, held that the letter of the Election Commission of India and the mere registration of the Haryana Republican Party as a political party with the Commission could be of no help to the respondent so far as his claim regarding a split in the RPI was concerned. He then added, "there is a difference between 'registration' of a political party and 'recognition' of a Legislature Party. While registration of a political party is done by the Election Commission, the recognition of a Legislature Party necessarily has to be granted by the Speaker of the concerned Legislative Assembly."

On the basis of the findings the Speaker then declared Shri Karan Singh Dalal disqualified for being a member of the Haryana Vidhan Sabha in terms of paragraph 2(1)(a) of the Tenth Schedule.

Consequential Action

Accordingly Shri Karan Singh Dalal ceased to be a member of the Haryana Legislative Assembly with immediate effect. The order of the Speaker was notified in the Haryana Govt. Gazette (Extra.) on 25 June 2004.

Subsequent Developments

A Writ Petition was filed in the Supreme Court of India against the Order of the Speaker. The Court, *vide* its order dated 28 June 2004, staying the operation of the order passed by the Speaker observed that the member would continue to function as member of the Assembly. He was permitted to attend the proceedings but the Court held that he should not be allowed to cast vote in any proceedings in the Assembly.

Jagjit Singh Sangwan Case (Haryana LA, 2003)

Petition for disqualification on ground of voluntarily giving up membership of original party: Nationalist Congress Party (NCP) and forming/joining the Democratic Congress Party of Haryana -held - valid case under paragraph 2(1) (a) of Tenth Schedule – Member disqualified – writ petition filed with the S.C. – Court stayed the operation of the order of the Speaker excepting the member's right to vote.

Facts of the Case

On 31 December 2003, Shri Jasbir Mallour, MLA filed a petition to the Speaker, Shri Satbir Singh Kadian under paragraph 2(1)(a) of the Tenth Schedule and the Rules framed thereunder against Shri Jagjit Singh Sangwan, MLA for voluntarily giving up membership of his original party *i.e.* the Nationalist Congress Party (NCP) and forming/joining Democratic Congress Party of Haryana (DCPH). The petitioner stated that the respondent was the sole member of the Legislature party of the NCP and that on 20 December 2003, he defected from his original party and formed the DCPH. On the same day, he gave up his membership of the NCP voluntarily. In support of his arguments, the petitioner had attached the press statements, which the respondent had issued on 30 December 2003 about the decision of split and formation of new party, etc.

A notice was issued to the respondent and copies were forwarded to him with the direction to file his reply within one month from the date of issue of the notice. The respondent was given adequate opportunities to reply to the notice and ultimately given personal hearing on 14 June, 2004 wherein he submitted an application seeking four weeks time to engage an Advocate, which was not allowed and he was directed to appear on 15 June 2004 which he did alone but again raised the issue of engaging an Advocate. However, he was directed to file his reply on 16 June 2004 which he submitted on the day but asked for four weeks' time again on two counts: one, to discuss the matter with a senior advocate and secondly, on the ground that the elections to the Rajya Sabha were to be held on 28 June 2004. A last and final opportunity was granted to him to appear personally assisted by his Counsel on 23 June 2004. The respondent appeared on the day and inspected certain records.

In his reply, the respondent stated that the workers/Leaders of the NCP in Haryana had decided to cause a split in the original political party i.e. NCP on 20 December 2003 by passing a unanimous resolution in this regard. He further stated that the Election Commission of India, after receipt of the above mentioned resolution of above date had raised certain objection to the name of the new political party *i.e.* Democratic Congress Party of Haryana and therefore, the name was changed to Democratic Dal of Haryana and the same was registered by the Commission as a political party *w.e.f.* 9 March 2004. He reproduced the letter dated 10 March 2004 by the Election Commission in support.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, documentary evidences, the relevant law and the Rules, the Speaker observed that it was incumbent upon the respondent to satisfy him about the genuineness of the claimed split in his original political party, namely NCP. However, the respondent failed to satisfy him in this regard. He further held that it had been admitted by the respondent himself that he formed/joined a new political party on 20 December 2003. No valid proof or evidence had been placed on the record by the respondent to show that a split had indeed taken place in his original political party *i.e.* NCP on 20 December 2003 or at any other time. The Speaker, therefore, held that Shri Jagjit Singh Sangwan had incurred disqualification for being a member of the Haryana Vidhan Sabha in terms of paragraph 2(1)(a) of the Tenth Schedule.

Consequential Action

Accordingly, Shri Sangwan ceased to be a member of the Haryana Legislative Assembly with immediate effect. The order of the Speaker was notified in the Haryana Govt. Gazette (Extra.) on 25 June 2004.

Subsequent Developments

A writ petition was filed in the Supreme Court of India against the Order of the Speaker. The Court, *vide* its order dated 28 June 2004, staying the operation of the order passed by the Speaker observed that the member would continue to function as member of the Assembly. The Court permitted him to attend the proceedings but held that he should not cast vote in any proceedings in the Assembly.

Rajinder Singh Bisla Case (Haryana LA, 2004)

Petition for disqualification for joining a political party: Indian National Congress by an independent member filed – Held – valid under Para 2(2) of the Tenth Schedule – member disqualified – Writ petition filed with the S.C. – Court stayed the operation of the order of the Speaker excepting the member's right to vote.

Facts of the Case

On 15 June 2004, Shri Nafe Singh, MLA filed a petition to the Speaker, Shri Satbir Singh Kadian under paragraph 2(2) of the Tenth Schedule and the Rules framed thereunder against Shri Rajinder Singh Bisla, MLA for voluntarily joining a political party *i.e.* Indian National Congress Party on 14 June 2004 after being elected as an Independent to the Haryana Vidhan Sabha. The petitioner stated that the respondent was an independent member of the Haryana Vidhan Sabha. He further stated that the fact of the respondent joining the political and Legislature parties of the Indian National Congress on 14 June 2004 as a member thereof was widely reported in all the daily newspapers in English as well as vernacular language of 15 June 2004. In support of his contention, he had attached the published news items wherein it had been reported that six independent members of the Haryana Vidhan Sabha including the respondent had joined the Indian National Congress Party and also that they were taken to the Congress President on the day by two Congress members. Reliance was also placed by the petitioner upon the news/ interviews shown on the private television channels.

Notice was issued to the respondent and copies were forwarded to him on 16 June 2004 and he was asked to submit his comments thereon by 24 June 2004.

The respondent filed a short reply to the main petition and also a reply to the application of 23 June 2004 submitted by the petitioner for leading additional evidence through his Counsel on 25 June 2004. In his short reply to the main petition, the respondent did not place on record any fact or evidence which would go to show that the contentions of the petitioner were incorrect. The respondent had made vague and malicious allegation in support of which no material or evidence had been submitted.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the contents of the petition and its accompanying annexures, the relevant law and the Rules, the Speaker while deciding on the case on 25 June 2004 observed the following:

> "The entire case has been examined in the light of the relevant law.... The documentary and electronic evidence produced and relied upon by the petitioner, needs to be examined and studied carefully to ascertain and establish beyond doubt, as to whether the respondent had in fact joined the Indian National Congress Party on 14.6.2004 or not, as claimed by the petitioner.
>
> As there is no controversy regarding the status of the respondent from February 2000 and before 14 June 2004, the dispute primarily arises regarding his true status as on 14 June 2004 onwards. In order to resolve the matter, the evidence produced and placed on the record by the petitioner has to be considered. The petitioner has placed on record the news items appearing on 15 June 2004 in the various leading newspapers. This documentary evidence is corroborated by the electronic evidence placed on the record by the petitioner. A viewing of the entire electronic record considered along with the supporting evidence placed on the record clearly leads *inter alia* to the following conclusions:
>
> (i) Six independent members of the Haryana Vidhan Sabha are clearly seen and heard acknowledging and admitting to their interviewers that they had joined the Congress Party on 14 June 2004.
>
> (ii) These six independent members of the Haryana Vidhan Sabha are Sarvashri Bhim Sain Mehta, Jai Parkash Gupta, Moola Ram, Rajinder Singh Bisla, Dariyab Singh and Dev Raj Deewan, MLAs.
>
> (iii) All the above named six members are seen in the company of senior Congress Party Functionaries and Leaders during the course of the said interviews by the Television Channels, wherein they admitted and acknowledged the fact that they had joined the Congress Party.
>
> (iv) Out of the above named six members, three members, namely, Sarvashri Desh Raj Deewan, Rajinder Singh Bisla and Jai Parkash Gupta are seen participating in the meeting of the CLP held on 16 June 2004 in the premises of the Haryana Vidhan Sabha."

He then added:

"In light of the above discussion based upon the irrefutable and clinching

evidence which the respondent has not been able to controvert or shake through any cogent evidence, it is established that the respondent, being an independently elected member of the Haryana Vidhan Sabha voluntarily joined the Indian National Congress Party on 14 June 2004. Consequently, the disqualification contemplated under Para 2 (2) of the Tenth Schedule to the Constitution has been wholly attracted by the respondent."

Consequential Action

Accordingly, the member, Shri Rajinder Singh Bisla ceased to be a member of the Haryana Vidhan Sabha with immediate effect*. The order of the Speaker was notified in the Haryana Govt. Gazette (Extra.) on 25 June 2004.

Subsequent Development

A Writ Petition was filed in the Supreme Court of India against the Order of the Speaker. The Court, *vide* its order dated 28 June 2004, staying the operation of the order passed by the Speaker observed that the member would continue to function as member of the Assembly. He is permitted to attend the proceedings but he should not cast vote in any proceedings in the Assembly**.

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* The Speaker disqualified five other Independent members on similar grounds vide his orders dated 25 June 2005. The members were Sarvashri Bhim Sain Mehta, Jai Parkash Gupta, Moola Ram, Dariyao Singh and Dev Raj Deewan. The orders of the Speaker were notified in the Haryana Govt. Gazette (Extra.) on 25 June 2004.

** Of the above mentioned five members, three members *viz.* Bhim Sain Mehta, Jai Parkash Gupta and Dev Raj Deewan filed Writ Petitions in the Supreme Court and the writs were disposed of by the Court in the same manner as that of Shri Bisla.

Haryana Vikas Party Merger Case (Haryana LA, 2004)

Claim for merger of Haryana Vikas Party, consisting of two members, with Indian National Congress – merger taken cognizance of – members treated as belonging to the party they merged with.

Facts of the Case

On 2 November 2004, Chaudhury Bansi Lal, claimed merger of his party *i.e.* Haryana Vikas Party, consisting of two members, with Indian National Congress Party. He, therefore, requested the Speaker, Shri Satbir Singh Kadian to allow the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the relevant provision of the law and the Rules, the Speaker took cognizance of the merger on 16 November 2004 and the member treated as belonging to Indian National Congress Party.

Himachal Pradesh

Janata Dal Split Case (HPLA, 1990)

Claim of split in Janata Dal – Splitaway group consisting of eight members formed a new party called Janata Dal(S) – Recognised.

Facts of the Case

On 14 November 1990, eight members, *viz. Sarvashri* Ram Lal, Moti Ram, Jagat Singh Negi, Roop Singh, Lajja Ram, Shiv Kumar, Kr. Durga Chand and Km. Shyama Sharma belonging to the Janata Dal consisting of eleven members claimed a split in the Party and informed that they had formed a new Party called Janata Dal (S). They also sought for its recognition and separate allotment of seats in the House.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case and relevant provision and Rules under the Tenth Schedule to the Constitution, the Speaker, Shri T.S. Negi, recognised the new party treated the members as belonging to the Janata Dal (S).

Subsequent Development

On 12 October 1992, two members of JD(S) namely, Kr. Durga Chand and Shri Shiv Kumar, broke away from the party and merged with Congress (I). The members were treated as members of Congress (I).

Janata Dal (S) Split Case (HPLA, 1991)

Claim of split in Janata Dal (S) and formation of a new party consisting of three members called Himachal Congress – Recognised.

Facts of the Case

On 24 July 1991, three members, *viz. Sarvashri* Ram Lal, Moti Ram and Lajja Ram belonging to the Janata Dal (S) having eight members claimed a split in the Party and informed that they had formed a new party called the Himachal Congress. They also sought for its recognition and allotment of seats in the Assembly.

Decision of the Speaker

After taking into consideration the facts, circumstances, relevant provisions and Rules under the Tenth Schedule to the Constitution, the Speaker, Shri T.S. Negi, recognised the party and treated the members as belonging to the Himachal Congress.

Subsequent Development

On 28 September 1992, the Himachal Congress Party merged with the Congress (I) Party. The three members belonging to the party were treated as the members of the Congress (I) Party.

Janata Dal (S) Split Case-II (HPLA, 1992)

Claim of split in Janata Dal (S) – Splitaway Group formed a new party consisting of two members called Himachal Vikas Manch – recognised.

Facts of the Case

On 30 June 1992, two members, *viz. Sarvashri* Jagat Singh Negi and Roop Singh belonging to the Janata Dal (S) consisting of five members claimed a split in the party and formation of a new party called the Himachal Vikas Manch.

Decision of the Speaker

After taking into consideration the facts, circumstances and the relevant provisions and Rules under the Tenth Schedule to the Constitution, the Speaker, Shri T.S. Negi recognised the party and treated the members as belonging to the Himachal Vikas Manch.

Subsequent Development

On 7 July 1992, the Himachal Vikas Manch merged with the Bhartiya Janata Party. The two members belonging to the party were treated as members of the Bharatiya Janata Party.

Mansa Ram and Prakash Chaudhary Case (HPLA, 1998)

Split in Himachal Vikas Congress, formation of new party, Himachal Kranti Party and consequent formation of a Group in the House by name of Himachal Kranti Party – Petition praying for disqualification of members on the ground of voluntarily giving up the membership filed – Held : Split/ merger of the party completely protected under the provisions of the Tenth Schedule.

Facts of the Case

Shri Kashmir Singh, MLA filed a petition under the Tenth Schedule to the Constitution of India against *Sarvashri* Mansa Ram and Prakash Chaudhary, MLAs and Ministers praying for their disqualification from the membership of the Legislative Assembly in terms of para 2(1) of the Tenth Schedule for voluntarily giving up the membership of their original party (Himachal Vikas Congress).

Sarvashri Mansa Ram and Prakash Chaudhary, MLAs and Ministers in the Government of Himachal Pradesh had fought election to the Ninth Himachal Vidhan Sabha in February 1998 as the candidates of the Himachal Vikas Congress. Both were elected to the Vidhan Sabha on 2 March 1998. On 10 March 1998, these two members along with others formed a new party by the name of Himachal Kranti Party. On 11 March 1998, this newly formed Himachal Kranti Party decided to merge with the Bharatiya Janata Party. They were admitted to the Bharatiya Janata Party the same day.

The petitioner in his petition had made the following contentions: (i) the newly formed Himachal Kranti Party was not a registered political party under Section 29-A of the Representation of People Act, 1951 and as such it was not a political party for the purpose of the Tenth Schedule of the Constitution and hence, the protection provided in para 4 to the Tenth Schedule to the Constitution was not available to them as this merger was illegal and unconstitutional; (ii) that a political party by the name of Himachal Kranti Party was already existing in the Himachal Pradesh and it was a registered one. As the Himachal Kranti Party was already existing, hence the split of Himachal Vikas Congress and formation of new Himachal Kranti Party by the respondents was in fact the merger of faction of the Himachal

Karnataka

Janata Dal Case (Karnataka LA, 1989)

Leader of the Janata Party consisting of 138 members moved the Speaker with a request to recognise a newly formed Janata Dal Legislature Party having 111 members party – Also to allow its merger with Lok Dal – Party recognised and merged – Petition for disqualification filed against the members –Issues raised therein were dealt with by the Speaker one by one – Held : Matters of defection not to be discussed in House – Dismissed.

Facts of the Case

In 1989, the Janata Legislature Party having 138 members was in existence in Karnataka Legislative Assembly. On 31 January 1989, the leader of that party, Shri S.R. Bommai, moved the Speaker with a request to recognise the Janata Dal Legislature Party consisting of 111 members. Along with the required forms, he also submitted affidavits from individual members agreeing to and endorsing the merger with another political party, *i.e.* Lok Dal to form Janata Dal. He also enclosed a copy of the Resolution passed by the Janata Legislature Party and the constitution of that party. In the light of the material furnished and the well established parliamentary practices and conventions as well as the provisions of the Tenth Schedule to the Constitution, the Speaker accorded recognition to the Janata Dal Legislature Party. A Bulletin in this respect was issued.

On 16 February 1989, Smt. Nagarathnamma, MLA and the Leader of the Opposition, filed a petition under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on ground of Defection) Rules, 1986, praying for disqualification of the 111 members of the Janata Dal Legislature Party.

The petitioner raised this issue in the House on 16 February 1989 and sought to make preliminary submissions on the petition. On this, two other members raised a point of order contending that the petition under Rule 6 of the Karnataka Legislative Assembly (Disqualification of Members on ground of Defection) Rules, 1986 could not be raised and discussed in the House. Members made their submissions on the issue.

After ascertaining that the petition was in order, a copy of the petition was forwarded to the respondent for his comments. The respondent in his comments dated 29 December 1989 denied the allegations and stated that he still continued to be a member of the political party *viz.* Kerala Congress which had sponsored and put him up for the Assembly election. He also stated that he had ample evidence in support of his contentions, which he would produce when given an opportunity of being heard in person.

The respondent *vide* his further communication dated 4 January 1990 *inter alia* requested that the hearings by the Speaker, Kerala Legislative Assembly, might be held in camera.

The Speaker heard the petitioner, Shri P.J. Joseph, member and Leader of Kerala Congress and the other two members on 5 January 1990. The petitioner and the members produced certain documents in support of their contentions.

As requested by the respondent, copies of the deposition of the petitioner and the other members and photocopies of the documents produced by them were furnished to him. Though the respondent was given three opportunities *i.e.* on 5, 9 and 12 January 1990, he neither appeared before the Speaker nor adduced any evidence.

The Speaker thereupon decided to proceed with the matter.

The issues for consideration before the Speaker were: (i) whether Shri R. Balakrishna Pillai had voluntarily given up his membership of Kerala Congress and thereby became liable for being disqualified from the membership of the Legislative Assembly; and (ii) whether the Speaker himself was competent to determine the question in controversy, without referring the matter to the Committee of Privileges for a preliminary enquiry.

Decision of the Speaker

Taking into consideration all the facts and circumstances of case, the Speaker, Shri Varkala Radhakrishanan pronounced his decision in the matter on 15 January 1990. Gist of the decision is as follows:

(i) An interesting point which came up for consideration in the case was whether the Speaker himself was competent to determine a question about the disqualification of a member without referring the matter to the Committee of Privileges.

On this issue the Speaker, was of the view that as per the provisions of para 6(1) of the Tenth Schedule, the Speaker of the House was the competent authority to decide the question of disqualification. The said

provisions were so clear that there could be no scope for any doubt about authority or competency of the Speaker to decide the matter. In this context the Speaker observed:

"As per Rule 7(4), the Speaker can either proceed to decide the matter himself or refer the matter to the Committee of Privileges for a preliminary enquiry for getting a report, only if he is satisfied that it is necessary and expedient to make such a reference...

As reading of Rule 7(4) of the Rules would clearly reveal that all the cases of defection need not should not be referred to the Committee of Privileges. The Speaker has to consider the merits and decide whether the matter should be referred to the Committee of Privileges for a preliminary enquiry... The reference contemplated in Rule 7(4) to the Committee of Privileges is only in certain limited cases and that too only to hold a preliminary enquiry and to file report before the Speaker. The word 'preliminary enquiry' necessarily contemplates a further enquiry by the Speaker. Hence there cannot be much weight in the criticism that the Speaker has to refer all cases of defection to the Committee of Privileges. Rule 7(4) clearly reveals that only certain cases of defection alone need be referred to the Committee of Privileges for a preliminary enquiry and it is for the Speaker to decide which case should be referred to the Committee of Privileges...

In fact the cases of defection under Paragraph 2(1)(b) are the types which are to be referred to the Committee of Privileges for a preliminary enquiry and report. In those cases, the offence of defection, becomes complete only when the matter is not condoned within 15 days, and only after 15 days the Speaker can take action for the commission of the offence of defection in accordance with the Rules. On the other hand the offence of defection under Paragraph (2)(1)(a) is complete as and when the member relinquishes or gives up his membership of the political party. When the membership is given up, he becomes disentitled to be a member of the House and, hence such an offence will have to be decided expeditiously. The provision in Rule 7(3)(b) limiting the grant of time of 7 days for getting the comments from defector, also is a clear indication that the matter has to be disposed of expeditiously. A careful consideration of the different provisions in the Rules and the Tenth Schedule would clearly indicate that all the cases of defection need not and cannot be referred to the Committee of

Privileges... Hence no procedural irregularity is committed by the Speaker in deciding the matter without reference to the Committee of Privileges.

(ii) On the issue whether the member was liable to be disqualified from the membership of the House on the ground of having voluntarily given up his membership of Kerala Congress, the Speaker observed that the unchallenged documents and the oral evidence led by Dr. K.C. Joseph, Shri Eapen Varghese, Shri M.V. Mani and Shri P.J. Joseph conclusively proved that Shri R. Balakrishna Pillai had voluntarily given up his membership of the political party, *i.e.* Kerala Congress and formed a new party by the name of Kerala Congress (B) with himself as the Chairman.

The Speaker further observed that "Shri R. Balakrishna Pillai worked against the Chairman of the party, who contested as an official candidate under the official symbol 'horse', during the last Parliament election. This conduct of Shri R. Balakrishna Pillai also would clearly reveal that he has voluntarily given up his membership of the political party *i.e.* Kerala Congress, which set up him as a candidate for the Assembly election and as such the contention put forward by Shri R. Balakrishna Pillai that he still continues to be a member of the Kerala Congress cannot be accepted... The only plausible and reasonable inference that can be drawn from the available evidence and circumstances is that Shri R. Balakrishna Pillai has voluntarily given up his membership of the political party *i.e.* Kerala Congress... Hence I find that Shri R. Balakrishna Pillai has voluntarily given up his membership of the political party, Kerala Congress as enshrined in Paragraph 2(1)(a) of the Tenth Schedule of the Constitution".

The Speaker also observed: "Altogether there are five members in the legislature party of Kerala Congress. Four of them are still in the Kerala Congress with Shri P.J. Joseph as their leader and Shri R. Balakrishna Pillai alone has given up his membership. Hence it cannot be a split or a division as mentioned in paragraph 3 of the Tenth Schedule of the Constitution. Likewise the provisions in Paragraph 4 also cannot be attracted and Shri R. Balakrishna Pillai is liable to be disqualified for being a member of the House.

Thus Shri R. Balakrishna Pillai, MLA has incurred the disqualification under Paragraph 2(1)(a) of the Tenth Schedule to the Constitution of

India and it is therefore found and declared that Shri R. Balakrishna Pillai, representing Kottarakkara Assembly Constituency, has become subject to the disqualification under paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India, with immediate effect".

Consequential Action

Copies of the order were forwarded to the petitioner, Dr. K.C. Joseph, the respondent, Shri R. Balakrishna Pillai, Shri P.J. Joseph, the Leader of Kerala Congress Party, the Secretary to the Election Commission of India and the State Government.

The order was also published in the Bulletin and notified in the Official Gazette.

Kerala Congress (M) Split Case (Kerala LA, 1993)

Claim of split in Original Party – Kerala Congress (M) Party – Recognised by Speaker – Allotted Separate bloc in the Assembly – Members of splitaway Group formed new Group called Kerala Congress (JACOB).

Facts of the Case

On 10 December 1993, Shri T.M. Jacob, MLA along with *Sarvashri* Jony Nelloor, P.M. Mathew and Mathew Stephen claimed a split in Kerala Congress (M) Party and pleaded that the splitaway Group might be allowed to function as a separate bloc in the Assembly and that their Group be recognised as original Kerala Congress (M).

Decision of the Speaker

After taking into consideration the circumstances and the relevant provisions and Rules under the Tenth Schedule, the Speaker recognised the splitaway Group led by Shri T.M. Jacob as a separate Group in the Assembly on 20 January 1994 and allotted separate bloc to the Group. The splitaway Group came to be known as Kerala Congress (Jacob).

Revolutionary Socialist Legislature Party Split Case (Kerala LA, 1999)

Claim of split in Original Party – Revolutionary Socialist Legislature Party (RSPL) Split recognised by the Speaker – Split away Group allotted separate Bloc in the Assembly – Subsequently given recognistion as a Legislature party.

Facts of the Case

On 25 March 1999, three members *Sarvashri* Baby John, Babu Divakaran and Prof. A.V. Thamarakshan, belonging to Revolutionary Socialist Party (RSP) claimed a split in the Party and pleaded that their Group, *i.e.*, the splitaway Group be recognised as RSP and the other Group and its leader be allotted seats in a separate bloc of seats.

Decision of the Speaker

The Speaker recognised the split on 13 December 1999 and allotted separate bloc to the Group in the Assembly. The splitaway Group came to be known as RSP (Baby John).

Subsequently, RSP (Baby John) was recognised in the House as Revolutionary Socialist Party of Kerala (Bolshevik) w.e.f. 20 June 2000.

Kabeer Case (Kerala LA, 2003)

Petition for disqualification on ground of voluntarily giving up of membership filed – Respondent in his comments claimed split in the Nationalist Congress Party (NCP) and formation of a new Party by name : Congress (S) – Petitioner subsequently intimated about withdrawal of petition – Speaker, however decided the matter – Held split caused owing to ideological difference and was valid; constitutional inhibitions specified in the Tenth Schedule not attracted – New party [Congress (Secular)] taken cognizance of Recognised – Petition closed.

Facts of the Case

The Nationalist Congress Party in Kerala Legislative Assembly consisted of two members *viz.* Shri A.C. Shanmughadas, its Leader and Shri V.C. Kabeer. Shri A.C. Shanmughadas filed a petition against Shri V.C. Kabeer, alleging that he had voluntarily given up his membership of the NCP and had thus incurred disqualification under the Tenth Schedule.

The petitioner submitted, along with the petition, photocopies of the newspaper reports in this regard as well as the photocopy of a letter allegedly addressed by Shri Kabeer to Shri Sharad Pawar, the National Leader of the NCP.

A copy of the petition together with its enclosures was forwarded to the respondent for his comments in the matter.

The respondent in his comments while denying the allegations contended that he originally belonged to the Indian National Congress and that after the Indian National Congress split in the year 1978, he remained with the parent party. Subsequently, the above faction was named as Indian Congress (Socialist) which later merged with the party led by Shri Sharad Pawar. The party was named as Nationalist Congress Party (NCP). The respondent was one of the functionaries of the above party in the State of Kerala. The Kerala Pradesh Committee of NCP was in fact the same Committee of Indian Congress (Socialist) presided by Shri Ramachandran Kadannapally. The office bearers were also the same.

In Kerala, the party was a constituent of Left Democratic Front (LDF) but from the very inception of NCP, the State leadership had certain resentments and

reservations ideologically with the national leadership and the same reached a flash point when the national leadership supported the BJP Government in Parliament at the time of discussion on resolution seeking disapproval of Prevention of Terrorism Ordinance. Shri Ramachandran Kadannapally, President of the Kerala Pradesh State Committee of NCP along with Shri P.M. Haris, one of the General Secretaries of the party, Shri V.K. Babu, Ex. MLA and other leaders and the majority of the members of the NCP in the State decided to break away from NCP and to revive Congress (Socialist) Party. The decision was declared at the meeting of the group on 17 April 2002. Thereafter, the above group was functioning as a faction of NCP in the State. The Palakkad District Committee of NCP that included the respondent, in the meeting held on 4 May 2002 unanimously decided to break away from the NCP. The Palakkad District Committee and the group led by Shri Ramachandran Kadannapally held a State Convention at Ernakulam approving the constitution of the Congress (Socialist) Party, the flag and the policies of the Party.

The respondent further added that he had submitted a letter dated 11 June 2002 to the Speaker intimating the split of the NCP Legislature Party and requesting to recognize him as belonging to Congress (Socialist) Party and seat him separately in the Assembly. According to him the split in the legislature party of NCP was consequent to the split in the original political party. He also explained that the letter addressed to Shri Sharad Pawar dated 8 May 2002 was only a personal letter, which had no official character. It was not also a resignation letter. He also pointed out that the split in the NCP was widely reported in the media; and that the annexures produced by the petitioner would also clearly reveal that NCP had vertically split and the faction under the leadership of Shri Ramachandran Kadannapally, resuscitated and constituted Congress (S). He also produced the copy of the constitution of Congress (Socialist).

The matter was slated for hearing on 30 September 2002 but adjourned to 11 November 2002, 17 December 2002 and thereafter to 14 February 2003 on the requests of the petitioner as well as that of the respondent. On 14 February 2003, Shri Shanmughadas submitted a letter intimating that he was withdrawing the petition on political grounds and requested that further action might be dropped.

The Speaker however proceeded to take a decision in the matter. The main issue that came up before the Speaker for consideration was whether Shri V.C. Kabeer had incurred disqualification from the membership of the Assembly for voluntarily giving up of his membership of Nationalist Congress Party (NCP).

Decision of the Speaker

After taking into consideration the facts, circumstances of the case, law and the relevant Rules, the Speaker, Shri Vakkom Purushottaman in his decision in the matter given on 11 June 2003; held as follows:–

"I consider that it would not be appropriate to ignore such a serious allegation involving constitutionally mandated actionable deviance on the part of a Legislator without examining the nature of the action on the part of an elected member, in view of the constitutional obligation cast on the Speaker of the Legislative Assembly. Shri V.C. Kabeer also did not adduce any evidence in view of request for the withdrawal of the petition. On a perusal of the newspaper reports produced by the petitioner and those available to me in this regard it is seen that it is on account of the conflict of opinion, divergence of approaches to policy formulation and incompatibility on ideological plane on the part of a group of the state leadership with the national leadership with respect to the issuance of Prevention of Terrorism Ordinance that has precipitated the split. ...There is no case that the action of Shri Kabeer was motivated by desire for material benefits or power. I find that the action of Shri V.C. Kabeer involves nothing unconstitutional, illegal or opposed to political morality. Evidently he himself constituted half of the NCP Legislature Party in the Legislative Assembly. In the circumstances, I am of the firm view that a duly elected member of the Legislature should not be attempted to be labeled as a defector and sought to be disqualified on such manifestly unsustainable and unrealistic allegations. The constitutional inhibitions specified in the Tenth Schedule are not attracted in the instant case and hence, the matter is closed."

Consequential Action

The order of the Speaker was published in Bulletin Part II. The new party *i.e.* Congress (Secular) Legislative Party was taken cognizance of w.e.f 11 June 2003 and Shri V.C. Kabeer treated as a member belonging to Congress (S).

Madhya Pradesh

Dilip Bhatere Case (MPLA, 1990)

Petition for disqualification filed against an Independent member for having joined Bharatiya Janata Party – Respondent allegedly associated himself with programmes and policies of Bharatiya Janata Party – Petition referred to Privilege Committee – Committee held: association with programmes and policies of a party enough for disqualification; respondent by his act of associating himself with a party incurred disqualification – Petition allowed – Respondent declared as disqualified by Speaker – Writ petition filed by respondent in Supreme Court – Dismissed.

Facts of the Case

On 19 December 1990, a petition was filed before the Speaker by Shri Ram Pratap Singh, MLA, against Shri Dilip Bhatere, MLA, under Rule 6 of the Members of Madhya Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 read with the Tenth Schedule to the Constitution of India praying for disqualification of Shri Bhatere for having joined a political party.

The petitioner prayed for disqualification of the respondent from the membership of the Assembly on the following grounds: (i) that, the respondent, elected to the Legislative Assembly as an Independent candidate, had been actively associated with the Bharatiya Janata Party (BJP) right from the time he was elected to the Assembly; (ii) that, he also attended Kar Sewa at Ayodhya which proved his close association with the BJP; (iii) that, he was registered as a member of the Balaghat district unit of the BJP and its local unit at Lanji; (iv) that, he was administered oath of the Office of the Parliamentary Secretary by the Chief Minister, Shri Sunderlal Patwa, on 15 December 1990.

Having ascertained the admissibility and veracity of the facts submitted by the petitioner, a copy of the petition filed by Shri Ram Pratap Singh was sent to Shri Dilip Bhatere for his comments.

Shri Bhatere in his comments, received in the Assembly Secretariat on 4 January 1991, *inter alia* contended: (i) that, he had attended meetings of the

BJP Legislature Party only as an Independent co-opted member and not as a member of the BJP; (ii) that, he participated in the Kar Sewa movement, but did not declare himself as a member of the BJP in the documents of arrest; (iii) that, he was a former member of the Balaghat District Unit of the BJP and its local branch at Lanji before his election. But, before contesting election he had resigned from the membership of that Party and contested as an Independent candidate; (iv) that, he was administered oath of the Office of Parliamentary Secretary on 14 December 1990 by the Chief Minister, Shri Sunderlal Patwa and the post of Parliamentary Secretary being a political one, he accepted the same; and (v) that, since he was still an Independent member and had not joined the BJP, he did not come under the rigours of disqualification provisions.

A copy of Shri Bhatere's reply was sent to the petitioner on which the latter gave his response on 15 March 1991. He *inter alia* submitted: (i) that, in the constitution of the BJP, the term co-opted member of the Legislature Party had not been defined. (ii) that, by taking part in the programmes, policies, meetings and functions of the BJP, Shri Bhatere was working as a member of the BJP; (iii) that, the appointment of Shri Dilip Bhatere as Parliamentary Secretary proved that the Chief Minister had administered him the oath of office of Parliamentary Secretary as a member of his own party. He also enclosed a copy of the Letter of Felicitation that was printed at the Prakash Printers, Lanji, District Balaghat and distributed in the first week of March 1990. By mentioning therein that he was the President of Lanji Unit of the BJP and Shri Om Prakash Khargel was the Secretary of that unit of the BJP, Shri Bhatere admitted that after his election he was a member and the office bearer of the BJP; (iv) Shri Lakhi Ram Agarwal, the State President of the BJP announced the *adhoc* Working Committee for the district in March 1990. Besides other members, Shri Dilip Bhatere was also included in the said Committee and a document was submitted in verification thereof.

Since, it was difficult to come to a conclusion without examining the issues raised in the petition, the replies and the counter-replies received and records submitted in that regard, the matter was referred to the Privileges Committee on 8 April 1991 for examination and submission of report by the Speaker for preliminary inquiry and report to him.

The Committee presented its Report to the Speaker on 25 July 1991. In its report, the Committee *inter alia* opined that to fulfill the conditions laid down under provisions of para 2(2) of the Tenth Schedule, it is not necessary to be a member of political party but merely being associated with or connected with or joining a party is sufficient. The Committee noted that the pre-election antecedents of Shri Dilip

Bhatere and his conduct after the elections by way of Felicitation letter and his nomination to the district level *ad hoc* working committee and his attending the meetings of the BJP Legislature Party meetings clearly indicated that he had joined the BJP. The Committee further noted that the entire chain of events and the documents furnished before the Committee provided conclusive indication that Shri Dilip Bhatere, after being elected to the Assembly as an Independent candidate, had joined the BJP, which is a political party. The Committee, therefore, held that Shri Dilip Bhatere incurred disqualification under the Tenth Schedule of the Constitution.

Decision of the Speaker

Considering the matter in the light of the petition, the reply and the oral evidences presented during the course of hearing, and the Report of the Committee of Privileges, the Speaker in his decision dated 10 August 1991, arrived at the following conclusions :–

(i) In order to fulfill the conditions laid down under para 2(2) of the Tenth Schedule, it was not necessary to be a member of a political party but merely one's association with some political outfit, joining its programmes and attending its meetings or taking part in its activities was sufficient.

(ii) The poster or letter of Felicitation wherein Shri Dilip Bhatere's name appeared under the caption *Vineet* (presenter) and thereafter, his post in the party as *Adhyaksha*, BJP Mandal, Lanji could be considered credible. This poster was submitted to the Returning Officer along with the manifesto under section 127 of the Representation of the People Act.

(iii) The Speaker accepted as relevant, the confession made by Shri Bhatere that he participated in the meeting of the BJP Legislature Party as an Independent ally.

(iv) As per the provisions under para 2(2) of the Tenth Schedule to the Constitution, a member who is elected to the Legislative Assembly as an Independent member will incur disqualification on joining any of the political parties.

(v) Shri Dilip Bhatere who was elected to the Madhya Pradesh Legislative Assembly as an Independent member but later on joined the Bharatiya Janata Party had thus incurred disqualification under para 2(2) of the Tenth Schedule to the Constitution.

Accordingly, the Speaker game the following decision:

> "I, Brij Mohan Mishra, Speaker, Legislative Assembly of Madhya Pradesh, in exercise of the power conferred on me under para 6(1) of the Tenth Schedule to the Constitution of India, after considering all the facts and evidences produced in respect of the petition filed by Shri Ram Pratap Singh, Member, Legislative Assembly under Members of Madhya Pradesh Legislative Assembly (Disqualification on the ground of defection) Rules, 1986, give my decision that Shri Dilip Bhatere, Member of Madhya Pradesh Legislative Assembly who has been elected to the Ninth Legislative Assembly from constituency No. 173 Lanji, has incurred disqualification with immediate effect under para 2(2) of the Tenth Schedule to the Constitution of India.
>
> Thus, Shri Dilip Bhatere has ceased to be a member of Madhya Pradesh Legislative Assembly with immediate effect and the post fell vacant."

Consequential Action

As directed by the Speaker, copies of his ruling were forwarded to the petitioner, the respondent and also to the Election Commission of India and the Government of Madhya Pradesh. The Speaker's order was published in the official Gazette of the Madhya Pradesh Government and Bulletin Part II of the Assembly.

Subsequent Developments

Thereafter, Shri Dilip Bhatere *vide* his Special Writ Petition No.14235 of 1991, filed before the Supreme Court, challenged the Order issued by the Speaker. The Supreme Court, however, dismissed the petition on 4 September 1991.

Mangal Parag and Others Case (MPLA, 1991)

Claim for split in Janata Dal (S) made; petition for disqualification filed against claimants of split for having voluntarily given up membership – Respondents contended that since they were part of splitaway group, they were not liable for disqualification; also pointed out that petitions did not comply with some provisions of Anti-Defection Rules – Petitioners granted permission to amend petitions during course of hearing to ensure compliance with Rules – Speaker held: claim regarding split was an afterthought – Petition allowed – Respondents disqualified – Writ Petition filed in High Court challenging Speaker's order as well as validity of the Tenth Schedule – Transfer of the case to Supreme Court – Validity of Tenth Schedule was affirmed in Kihota Hollohon vs Zachilhu Case - Transferred again to High Court – High Court held: allowing petitioners to amend their petitions after submission was outside Speaker's jurisdiction - Petition allowed – Speaker's order quashed.

Facts of the Case

Following a split in the Janata Dal at national level on 27 December 1990, a new party known as the Madhya Pardesh Janata Dal (Samajwadi) was formed in Madhya Pradesh. A resolution to this effect was passed by that Party on 2 April 1991. On 3 April 1991, Shri Vidya Charan Shukla, Ex-President of the Janata Dal (S) informed the Speaker, Madhya Pradesh Legislative Assembly about the split. On 16 April 1991, six MLAs, *viz. Sarvashri* Arun Mishra, Mangal Parag, Santosh Aggarwal, Lakshman Jaidev Satpathi, Ashok Rao and Shiv Kumar Singh, intimated the Speaker that following a split in the Janata Dal (S) on 3 April 1991, they had formed a separate Group by the name 'Progressive Party'. On 18 April 1991, the said six members unanimously resolved to merge with the Indian National Congress. In the meantime, on 6 April 1991, Shrimati Neha Singh, MLA, gave a petition under Rule 6 of the Members of Madhya Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 or the Assembly Anti-Defection Rules, 1986 read with the Tenth Schedule to the Constitution alleging that *Sarvashri* Mangal Parag, Santosh Aggarwal, Lakshman Jaidev Satpathi, Ashok

Rao and Arun Mishra, all M.L.As belonging to the Janata Dal (S) Legislature Party, had joined the Congress (I) Party and thus become subject to disqualification for the membership of the Madhya Pradesh Legislative Assembly.

Having found that the petition was in order and admissible under the Rules, the same along with the enclosures consisting of newspaper clippings was forwarded to the respondents and the Leader of the Janata Dal (S) Legislature Party on 10 April 1991 directing them to submit their written comments.

Later, on 11 April, 1991, Shri Shailendra Pradhan, MLA, filed a seperate petition praying for disqualification of Shri Shiv Kumar Singh, MLA, along with the five members mentioned above, from the membership of the Madhya Pradesh Legislative Assembly for having voluntarily given up the membership of their party. It was averred in the petition that the respondents had left the Janata Dal (S) to join the Congress (I). The petition submitted by Shri Pradhan along with the enclosures was also forwarded to respondents and the Leader of the Janata Dal (S) Legislature Party for their comments.

In his reply dated 12 April 1991, the Leader of the Janata Dal (S) Legislature Party submitted that he came to know about joining of the Congress (I) Party by the respondents through newspapers reports only. It was further added by him that the respondents had not denied this fact till submission of his letter dated 12 April 1991 to the Speaker.

On 15 April 1991, a jointly signed reply was submitted by the respondents stating *inter alia* that the petitions were liable to be dismissed for non-compliance of the requirements of the Rule 6 and Rule 7 of the Assembly Anti-Defection Rules, 1986. It was further averred in the reply that a Group represented by them had separated following a split in the original Party in April 1991 which consisted of more than one-half of the total membership. Hence the provisions regarding disqualification under para 2(1)(a) of the Tenth Schedule to the Constitution did not apply in their case.

Copies of the replies submitted by the respondents were sent to the petitioners directing them to file their responses to the same. Shri Shailendra Pradhan, the petitioner *vide* his letter dated 18 April 1991, stated that statements made by him in the petitions were true to the best of his knowledge. He further contended that the respondents by acknowledging the fact that they had left their original party in April 1991, accepted the allegations leveled in the petition.

Later, on 19 April 1991, the respondents *vide* a letter addressed to the Speaker submitted that the decision regarding merger with Congress (I) was taken unanimously and since the strength of the split away group was more than the

requirement, the stipulated provisions regarding disqualification did not apply in their case.

The Speaker permitted the petitioners to amend their petitions with a view to ensure that the same comply with the requirements of the Assembly Anti-defection Rules. Thereafter, the Speaker caused issue of a notice to the respondents to appear before him to present their case on 29 April 1991. The hearings continued till 30 April 1991. During the course of personal hearing, Smt. Neha Singh, MLA, submitted a written application wherein reiterating the facts mentioned in her earlier petition, she contended that the local newspaper clippings confirmed the respondents' joining of the Congress (I) Party. She further submitted that the claim of split by the respondent was totally fictitious and neither any news nor any information was received by the Speaker's Office in this regard.

During the course of personal hearing, the respondents requested the Speaker to refer the case to the Privileges Committee as was done in the case of an Independent legislator, Shri Dilip Bhatere. The Speaker while declining to refer the case to the Privileges Committee quoted Rule 7(4) of the Members of Madhya Pradesh Legislative Assembly (Disqualification on ground of defection) Rules, 1986 which endows the Speaker with the discretionary power in this regard.

The following issues emerged for decision by the Speaker:

(i) Whether, the petition filed by the petitioner against the respondents was in accordance with the rules or not ?

(ii) Whether, there was a split in the Janata Dal (S) Legislature Party in the first week of April 1991 ?

(iii) Whether, the respondents came under the rigours of disqualification provisions of the Tenth Schedule ?

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker gave his decision on 1 May 1991. As regards first issue, the Speaker opined that the petitions were submitted as per the procedure laid down in the law. As regards the issue no.(ii) regarding split in the Janata Dal (S), the Speaker opined as follows: (i) The split was an after-thought which was utilized by the respondents to escape the rigours of the law stipulated in the Tenth Schedule to the Constitution. Moreover, no information was furnished to the Speaker regarding the purported split; (ii) The respondents had left the Janata Dal (S) in the first week of April 1991, the fact which was later admitted by them during the hearing; (iii) Since the split in a political party is a significant event, the same receives wide coverage in the media. In this

case, however, the entire episode escaped the attention of the media; (iv) In the course of hearing, some new facts emerged regarding the name of the new Legislature Party. In the letter dated 15 April 1991, it was referred to as the Janata Dal Progressive Party. During the personal hearing, Shri Santosh Aggarwal described it as the Janata Dal Pragatisheel (Progressive). Another member, Shri Satpathi, recognized it as the Pragatisheel (Progressive) Legislature Party and in the letter dated 30 April 1991, it was mentioned as the Pragatisheel (Progressive) Legislature Party. Besides, no information was furnished by the respondents to the Leader of the Janata Dal (S) Legislature Party regarding the split in their original political party.

As regards the final issue, the Speaker opined that it was clear that the respondents had voluntarily given up their membership of the Janata Dal (S). In spite of the fact that they were given sufficient time, they failed to prove that leaving of the party in such a manner was caused by a split in the party.

The Speaker in the decision finally held as under:

> "I, Brijmohan Mishra, Speaker, Madhya Pradesh Legislative Assembly in pursuance of the powers conferred on me under para 6 (1) of the Tenth Schedule of the Constitution of India give this ruling after giving due consideration to all the facts and evidences in the case regarding petitions received under the Members of Madhya Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 from Shrimati Neha Singh and Shri Shailendra Pradhan, MLA, Madhya Pradesh Legislative Assembly that the members of Madhya Pradesh Legislative Assembly, *Sarvashri* Mangal Parag, Santosh Aggarwal, Lakshman Jaidev Satpathi, Ashok Rao, Arun Kumar Mishra and Shiv Kumar Singh elected as Members of Legislative Assembly from the constituency no.195 (Jabalpur East), 140 (Mahasamund), 130 (Satna), 117 (Bilha), 135 (Sahdol) and 287 (Burhanpur) respectively stand disqualified under Tenth Schedule of the Constitution of India".

Consequential Action

As directed by the Speaker, copies of his order were issued to the petitioners, the respondents and all other concerned. The order was also published in the Madhya Pradesh Government Gazette.

Subsequent Developments

Aggrieved with the Speaker's order, the disqualified M.L.As filed a writ petition before the High Court, Jabalpur challenging the Speaker's order as well as

the validity of the Tenth Schedule to the Constitution of India. Since, at that time, the Supreme Court was hearing various cases filed under the Anti-Defection Law after transferring these cases from the High Courts of the various States, an interim stay was granted in cases pertaining to Madhya Pradesh also. Subsequently, in its landmark judgment, *i.e.* Kihota Hollohon vs Zachilhu Case, the Supreme Court affirmed the validity of the Tenth Schedule to the Constitution excluding paragraph 7 thereof. This judgment settled the prayer for quashing the Tenth Schedule. When the present case came up before the Supreme Court, the Court by order dated 12 December 1991 transferred this case to the High Court, Jabalpur.

The High Court while considering the case in the light of the petition, replies and the views of the Supreme Court, *inter alia* noted that the initial petitions filed by Smt. Neha Singh and Shri Shailendra Pradhan were defective. The Speaker, however, permitted both the petitioners to amend the same in order to bring them in line with sub-rules (6) of the Rules of 1986 and proceeded to decide the same on merit. This act of the Speaker, according to the High Court, was absolutely illegal and without jurisdiction. The High Court held that the Speaker should have dismissed the petitions on the preliminary objection filed by the petitioners. The High Court, therefore, found the order passed by the Speaker liable for quashing. Consequently, therefore, the High Court quashed the Speaker's order disqualifying M.L.As.

Akhand Case (MPLA, 1998)

Voluntarily giving up membership of Congress (I) – Petition for disqualification filed – Respondent filed papers for Lok Sabha election as a candidate of Bahujan Samaj Party – Came under rigours of Para 2(1)(a) of Tenth Schedule – Petition allowed – Writ Petition in High Court – Speaker's order stayed – Dissolution of Assembly

Facts of the Case

During the Tenth Madhya Pradesh Legislative Assembly, Shri Ram Kumar Patel, MLA, filed a petition under para 2(1) (a) of the Tenth Schedule to the Constitution of India read with article 191(2) of the Constitution of India before the Speaker against Shri Akhand, MLA, praying for his disqualification for having voluntarily given up his membership by joining the Bahujan Samaj Party (BSP).

It was *inter alia* averred in the petition that the respondent was elected as a member of the Assembly on the ticket of the Congress (I) Party. Later, however, he filed papers as a candidate of the BSP for the Lok Sabha elections. The petitioner contended that the act amounted to voluntarily giving up membership of his original Party, *i.e.* the Congress (I). The respondent, therefore, was liable for disqualification for being member of the Assembly.

Having found that the petition was in order, the Speaker caused issuance of a notice to the respondent. Simultaneously, a copy of the notice was sent to the Leader of the Congress (I) Legislature Party for his comments.

Responding to the notice, the Leader of the Congress (I) Party submitted that the respondent publicly declared that he had resigned from the Congress (I) Party. Besides, he not only accepted the membership of BSP but also contested election from the parliamentary constituency No. 6 of Madhya Pradesh as an authorized candidate of the BSP. He was liable to be disqualified in terms of provision of para 2(1)(a) of the Tenth Schedule.

In his reply submitted on 19 March 1998, the respondent while stating that he had not voluntarily given up the membership of the Congress (I) Party, raised some preliminary objections regarding admissibility of the petition. Firstly, the petition was not verified in the manner prescribed under the law and as per provisions

stipulated under Rules 6(6) of the Assembly Anti-Defection Rules, 1986. Secondly, the signatures against paras 1 to 4 of the petition and at the end of the petition were not the same. Thirdly, the documents attached with the petition were not verified properly. Lastly, copies of documentary evidence were not enclosed with the petition and the details about the source of information therein was not disclosed. On these grounds, the respondent contended that the petition was not admissible.

With reference to the first objection, the Speaker referred to an earlier ruling of the High Court (Sagara Singh Vs. Chajjuram AIR 1964, Jammu and Kashmir, 88) in which the High Court had declined to declare a petition inadmissible on ground of petitioner's failure to state as to which paragraph he verified on his personal knowledge and which he verified upon information received by him from other sources. In the light of the judgment, the Speaker opined that the petition was not liable for dismissal due to any lacuna in the verification. Secondly, after a close scrutiny of the petition, it was found that the signatures on paras 1 to 4 were in the Roman script whereas the signatures at the end of the petition were in the Devanagri script. It was therefore natural that the said signatures were not the same due to different scripts. The Speaker, therefore, held that the signatures in different scripts could not be termed as lacuna in the petition. Thirdly, as regards the objection that the verification of the documents was not done in proper manner, the Speaker did not sustain the same. In this connection, the Speaker referred to the provision in Rule 6(7) of the Assembly Anti-Defection Rules, 1986 which provide that the petitioner shall sign each annexure and that it shall be verified in the same manner as a petition. However, the rules are silent about the types of document which come under the category of annexures. Fourthly, the Speaker also rejected the objection that the copies of the documentary proof had not been enclosed with the petition because as mentioned earlier, the respondent had enclosed 6 nos. of documents (photocopies of the clippings from newspapers) with the petition. This was notwithstanding the fact that the documents were verified as per law or not.

Later, the respondent contended that the petitioner had not submitted any affidavit in support of the petition. In Speaker's opinion, however, as per rules, affidavit was not required in support of the petition.

Considering the matter in the light of the facts that emerged during the process, the Speaker had following two points to decide:

(i) Firstly, whether the respondent voluntarily gave up the membership of the Congress (I) Party; and

(ii) Secondly, whether he joined the BSP?

Decision of the Speaker

The Speaker gave his decision on 14 May 1998. The Speaker observed during the hearing that the respondent was set up as a candidate by the BSP for contesting the Khajuraho Parliamentary Constituency election on 3 February 1998 and the respondent signed requisite papers for the same. The respondent contested the election after being elected as a member of the Legislative Assembly on the Congress (I) Party ticket. It was, therefore, presumed that the respondent had voluntarily given up the membership of Congress (I) Party, the political party of which he was member in the Assembly.

In his initial reply, the respondent did not mention that he was expelled from the Congress (I) Party. However, in para 4 of his subsequent application dated 22 April 1998, he intimated the Speaker that as he had been expelled for six years from the primary membership of the Congress (I) Party, the relevant provisions of the Anti-Defection Law did not apply in his case. Alongwith the written reply, he also submitted two self attested photocopies as documentary evidence. The Speaker, however, opined that the photocopies had no evidential value.

On the basis of the aforesaid findings, the Speaker concluded that the respondent had voluntarily given up his membership and, therefore, he was disqualified to continue as a member of the Legislative Assembly under para 2(1)(a) of the Tenth Schedule to the Constitution of India read with article 191(2) of Constitution of India.

Consequential Action

The Order was published in the official Gazette of the Government of Madhya Pradesh.

Subsequent Development

Aggrieved with the above order, Shri Akhand filed Writ Petition No.2230/98 before the Hon'ble High Court, Jabalpur challenging the order issued by the Speaker. While admitting the petition, the Hon'ble High Court stayed the operation of the impugned order to the extent that the petitioner would be allowed to participate in the proceedings as a member of the House. However, he would not be permitted to draw his salary until further orders. Meanwhile, the Tenth Assembly was dissolved and with effect from 1 December 1998, the Eleventh Assembly was constituted.

Maharashtra

Janata Party Split Case (Maharashtra LA, 1989)

Claim for split in Janata Party by all 21 MLAs – Splitaway Group formed new party by the name of Janata Dal – Found Valid in terms of para 3 of Tenth Schedule – Taken cognizance of

Facts of the Case

The Janata Party had 21 MLAs in the Sixth Maharashtra Legislative Assembly. On 9 March 1989, 20 MLAs and on 15 March 1989 one MLA* addressed communications individually to the Speaker informing him that a new Group by the name of the Janata Dal had been formed in the House as a result of split in their political party,. *viz.* Janata Party. These MLAs further prayed that the new Group be granted recognition.

The issue involved was whether the splitaway Group consisted of not less than one-third of the members of the undivided Janata Legislature Party.

Decision of the Speaker

As the communication was given in person by the 21 members claiming the split, the Speaker, Shri Shankarrao Jagtap, after examining the matter and satisfying himself about the validity of the split in the Janata Party, accorded recognition to the new Group as the 'Janata Dal' in the Assembly *vide* his order dated 24 April 1989.

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* Smt. Mrinal Keshav Gore, *Sarvashri* Domnic Gonsalvis, Dagadu Kashiram Chaudhari, Dada Jyotirao Jadhavrao, Parasharam Dhondo Taware, Babanrao Dadaba Dhakane, Vithal Baburao Tupe, Nihal Ahmed, Moulvi, A. Usman, Ishwar Davalji Mahipal Patale, Sambhaji Hari Pawar, Babanrao Bhikaji Pachapute, Annasahed P.K. Patil, Shantaram Shivaram Philse, Kisanrao Baburao Banakhele. Hari Shankar Mahale, Hiraman Banduji Barkhede, Onkar Narayan Wagh, Shripatrao Dinkarrao Shinde, Pushpasen Bhivaji Sawant and Pandurang Jayaramji Hajare.

Socialist (Sharad Chandra Sinha) Merger Case (Maharashtra LA, 1991)

Claim of merger by lone MLA of Socialist (Sharad Chandra Sinha) Legislature Party with Indian National Congress – Confirmed by Party being merged with – Found valid in terms of Para 4 of Tenth Schedule – Member treated accordingly

Facts of the Case

On 12 May 1991, Shri Suresh Jain, the lone MLA belonging to the Socialist (Sharad Chandra Sinha) Legislature Party submitted a communication to the Speaker intimating that his Party had merged with the Indian National Congress (INC). The Chief Whip of the INC, in a letter addressed to the Speaker, also communicated his Party's consent to the Speaker regarding the above merger.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Madhukarrao Choudhary, gave his decision dated 24 June 1991 under the Tenth Schedule in the matter. As the claim for merger was intimated to the Speaker by Shri Jain in person, who was the lone MLA belonging to the merging party, the Speaker found the merger valid in terms of provisions in para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Janata Dal Split Case (Maharashtra LA, 1991)

Claim for split in Janata Dal by 9 out of Total 23 MLAs – Splitaway Group formed new party by the name of Maharashtra Congress Dal – Found valid in terms of para 3 of Tenth Schedule – Taken cognizance of – New party merged with INC – Found Valid in terms of para 4 of Tenth Schedule – Merger allowed – Members treated accordingly

Facts of the Case

The Janata Dal had 23 members in the Seventh Legislative Assembly. On 26 July 1991, nine MLAs* addressed a joint communication to the Speaker informing him that they had formally split from the Janata Dal and formed a new Group by the name of the Maharashtra Congress Dal. The members further claimed that the new Group had come into being on 26 July 1991 and prayed that it be granted recognition in terms of para 3 of the Tenth Schedule. No reasons were given for the split.

The issue involved was whether the new Group consisted of not less than one-third members of the undivided Janata Dal Legislature Party.

Decision of the Speaker

As the communication was given in person by the nine members and as the new Group consisted of more than one-third of the total strength of the undivided Party as required under the law, the Speaker, Shri Madhukarrao Choudhary, after examining the matter and satisfying himself about the validity of the split, accorded recognition to the new Group as the Maharashtra Congress Dal in the Assembly *vide* his order dated 1 August 1991.

Subsequent Developments

On 1 August 1991, all the nine MLAs of the new Group, *viz.* the Maharashtra Congress Dal, submitted another communication to the Speaker informing him that the newly formed Maharashtra Congress Dal had decided to merge with the Indian National Congress. On 1 August 1991, the Speaker after satisfying himself that the claim for merger was valid in terms of provisions of para 4 of the Tenth Schedule, allowed merger of the Maharashtra Congress Dal with the Indian National Congress.

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* *Sarvashri* Jawahar Trimbakrao Parvekar, Bajirao Y. Narayan, Devrao Jaituji Gedam, Bhanudas Kashinath Murkute, Prakash Abaji Devasarkar, Narayan Bajirao Patil, Babanrao Bhikaji Pachpute, Netaji Tanavaji Rajagadkar and K.C. Padvi.

Shiv Sena Party Split Case (Maharashtra LA, 1991)

Claim of split in Shiv Sena legislature party by 18 out of Total 52 MLAs – Splitaway group formed new party by the name of Shiv Sena (B) – Found valid in terms of Para 3 of Tenth Schedule – Taken cognizance of – New Party merged with Indian National Congress – Found valid in terms of para 4 of Tenth Schedule – Merger allowed – Members treated accordingly

Facts of the Case

The Shiv Sena Legislature Party had 52 members in the Seventh Maharashtra Legislative Assembly. On 5 December 1991, 18 MLAs* addressed a joint communication to the Speaker informing him that they had formally split from the Shiv Sena and formed a new Group in the name of the Shiv Sena(B). The members while stating that the new group had come into being *w.e.f.* 4 December 1991, made a request that the split be taken cognizance of and the new Group be granted recognition in terms of para 3 of the Tenth Schedule.

The issue involved was whether the splitaway Group consisted of not less than one-third of the members of the undivided Shiv Sena Legislature Party.

Decision of the Speaker

As the communication was given in person by the 18 MLAs and as the new Group consisted of more than one-third of the total strength of the undivided Party as required under the law, the Speaker, Shri Madhukarrao Choudhary, after examining the matter and satisfying himself about the validity of the split, took cognizance of the split and accorded recognition to the Shiv Sena (B) in the Assembly *vide* his order dated 10 December 1991.

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* *Sarvashri* Chhagan Chandrakant Bhujbal, Rajendra Vyankatrao Gode, Jagannath Sitaramji Dhone, Prakash Gunavant Bharsakhale, Gulabarao Ramrao Gavande, Gajanan Devram Dalu, Dilip Malharrao Desari, Namdeo Vakaram Donadkar, Kailash Bcharu Patil, Haribhau Atmaram Mahajan, Krishnarao Ganpatrao Ingale, Pradeep Babanrao Vadanere, Maruti Parasharam Shinde, Hariram Atmaramji Varkhede, Babanrao Gholap, Babasaheb Yashavant Patil, Hanumant Daulatrao Babade and Appasaheb Babanrao Waghachaure

Subsequent Development

On 18 December 1991, 12** of the 18 members of the newly constituted Shiv Sena (B) submitted another communication to the Speaker informing him that they had decided to merge with the Indian National Congress (INC). Shri Shivajirao Deshmukh, the Chief Whip of the INC Legislature Party *vide* his letter dated 18 December 1991 also informed the Speaker that 12 MLAs of the Shiv Sena (B) had joined the INC and that the INC had accepted their request for merger with the Party. The Speaker, Shri Madhukarrao Choudhary, after satisfying himself that the claim for merger was valid in terms of provisions of para 4 of the Tenth Schedule allowed the merger of the 12 members of the Shiv Sena (B) with the INC *vide* his order dated 18 December 1991.

** *Sarvashri* Chhagan Chandrakant Bhujbal, Rajendra Vyankatrao Gode, Jagannath Sitaramji Dhone, Gajanan Devram Dalu, Namdeo Vakaram Donadkar, Kailash Beharu Patil, Haribhau Atmaram Mahajan, Krishnarao Ganpatrao Ingale, Pradeep Babanrao Vadanere, Hariram Atmaramji Varkhede, Babasaheb Yashavant Patil and Appasaheb Babanrao Waghachaure.

Shiv Sena (B) Split Case (Maharashtra LA, 1992)

Claim of split made in Shiv Sena (B) Party by 3 out of total 6 MLAs of Party – Splitaway group formed new party by the name of Shiv Sena (C) – Taken cognizance of in terms of para 3 of Tenth Schedule - New party merged with Indian National Congress – Found valid in terms of para 4 of Tenth Schedule – Merger allowed – Members treated accordingly

Facts of the Case

The Shiv Sena (B) Legislature Party had six members in the Seventh Maharashtra Legislative Assembly as on 27 March 1992. On 27 March 1992, three members, *Sarvashri* Hanumant Bobde, Maroti Parshuram Shinde and Diliprao Malharrao Desari, gave a communication to the Speaker informing him that they had formally split from the Shiv Sena (B) and formed a new Group by the name of Shiv Sena (C). They further claimed that the new Group had come into being *w.e.f.* 27 March 1992 and requested that the same be granted recognition in terms of para 3 of the Tenth Schedule.

The issue involved was whether the splitaway Group consisted of not less than one-third of the members of undivided Shiv Sena(B) Legislature Party.

Decision of the Speaker

After consideration of the facts and circumstances of the case and provisions of the Tenth Schedule and rules thereunder, the Speaker, Shri Madhukarrao Choudhary, gave his decision dated 27 March 1992 under the Tenth Schedule in the matter. As the communication was given in person by the three members and the splitaway Group consisted of three out of the total six members of the Shiv Sena(B), *i.e.* more than one-third of the total strength, as required under the law, the Speaker found the split in Shiv Sena(B) valid and accordingly took cognizance of formation of Shiv Sena(C) in the Assembly.

Subsequent Development

On 27 March 1992, at 4.15p.m., the above-mentioned MLAs of the Shiv Sena (C) submitted another communication to the Speaker informing him that they had decided to merge with the Indian National Congress (INC). After consideration of the facts and circumstances of the case, the Speaker, Shri Madhukarrao Choudhary, gave his decision dated 27 March 1992 under the Tenth Schedule in the

matter. Delivering his decision, the Speaker held as under:

> "After careful examination of the case and in exercise of the powers conferred upon me under the Tenth Schedule of the Constitution of India, I, Shri Madhukarrao Choudhary, Speaker, Maharashtra Legislative Assembly, do hereby declare that *Sarvashri* Hanumant Bobde, Maroti Parshuram Shinde and Diliprao Malharao Desari, MLAs shall henceforth be treated as members belonging to the Indian National Congress Party with immediate effect as requested by them."

Shiv Sena (B) Merger Case (Maharashtra LA, 1992)

Claim of merger by all 3 MLAs of Shiv Sena (B) with Shiv Sena – Fonnd valid in terms of para 4 of Tenth Schedule – Allowed – Members treated accordingly

Facts of the Case

The Shiv Sena (B) Legislature Party had six members in the Seventh Maharashtra Legislative Assembly. On 27 March 1992, three MLAs, *viz. Sarvashri* Hanumant Bobde, Maroti Parshuram Shinde and Diliprao Malharrao Desai claimed a split and formed the Shiv Sena (C) Party. The split was taken cognizance of by the Speaker. The Shiv Sena (B) Legislature Party, therefore, had three MLAs in the Assembly as on 27 March 1992.

On 27 March 1992, these three MLAs, namely *Sarvashri* Gulabrao Garande, Baban Gholap and Prakash Bharsakhale addressed a joint communication to the Speaker wherein they claimed that they had decided to merge with their original Party, *viz.* the Shiv Sena, and requested the Speaker to recognize the merger.

Decision of the Speaker

After taking into consideration facts and circumstances of the case and having examined the material on record, the Speaker, Shri Madhukarrao Choudhary, gave his decision dated 27 March 1992 under the Tenth Schedule in the matter. The Speaker after having satisfied himself that the claim for merger was valid in terms of provisions of exercise of para 4 of the Tenth Schedule, allowed the merger.

Janata Dal Split Case (Maharashtra LA, 1993)

Claim of split in Janata Dal by 5 out of 14 MLAs – Splitaway Group formed new Group by the name of Samajwadi (B) Party – Found valid in terms of para 3 of Tenth Schedule – Taken cognizance of – Members treated accordingly

Facts of the Case

The Janata Dal Legislature Party had 14 members in the Seventh Maharashtra Legislative Assembly as on 30 December 1993. Five out of these 14 MLAs* addressed a joint communication to the Speaker on 30 December 1993 informing that they had formally split from the Janata Dal and formed a new Party by the name of the Samajwadi (B) Party. Claiming that the new Party had come into being *w.e.f.* 30 December 1993, they requested the Speaker to recognize it.

The issue involved was whether the new Group consisted of not less than one-third of the members of the undivided Janata Dal Legislature Party.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Madhukarrao Choudhary, gave his decision dated 30 December 1993 under the Tenth Schedule in the matter. As the communication was given in person by the five MLAs claiming split and as the new Party consisted of more than one-third of the total strength of the undivided party as required under the law, the Speaker, Shri Madhukarrao Choudhary, after examining the matter and satisfying himself about the validity of the split took cognizance of the split and recognized the new Party in the Assembly *vide* his order dated 30 December 1993.

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* *Sarvashri* Moreshwar Temburde, Wamanrao Chatap, Vasant Bonde, Shivraj Tondchirkar and Smt. Saroj Kashikar.

Republican Party of India Merger Case (Maharashtra LA, 1994)

Claim of merger by lone MLA of Republican Party of India with Indian National Congress – Confirmed by Party being merged with – Found valid in terms of para 4 of Tenth Schedule – Allowed – Member treated accordingly

Facts of the Case

On 6 August 1994, Shri Bhimrao Ramji Keram, the lone member belonging to the Republican Party of India, gave a communication to the Speaker intimating that he had joined the Indian National Congress (INC) Legislature Party. The Chief Whip of the INC Legislature Party, in his letter dated 6 August 1994 addressed to the Speaker, also confirmed the fact regarding the merger.

Decision of the Speaker

After consideration of the facts and circumstances, the Speaker, Shri Arun Gujarathi, gave his decision dated 6 August 1994 under the Tenth Schedule in the matter. As the merger fulfilled requirements stipulated under para 4 of Tenth Schedule, the Speaker allowed the merger.

Samajwadi Party Split Case (Maharashtra LA, 1999)

Claim of split in Samajwadi Party by 1 out of total 2 MLAs – Splitaway member formed new group by the name of Samajwadi (B) party – Found valid in term of para 3 of Tenth Schedule – Taken cognizance of – New Group merged with NCP – Confirmed by Party Being merged with – Found valid in terms of para 4 of Tenth Schedule – Allowed

Facts of the Case

The Samajwadi Party had two members in the Ninth Maharashtra Legislative Assembly. On 23 October 1999, one MLA, Shri Bashir Moosa Patel, addressed a communication to the Speaker informing him that he had formally split from the Samajwadi Party and formed a new Group by the name of the Samajwadi (B) Party. He further claimed that the new Group had come into being *w.e.f.* 21 October 1991 and requested that it be granted recognition.

The issue involved was whether the new group consisted of not less than one-third of the members of the original legislature party.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Arunlal Gujarathi, gave his decision dated 3 November 1999 under the Tenth Schedule in the matter. As the communication was presented in person by the concerned member claiming the split and as the new Group consisted of one out of the total two members of the Samajwadi Party, *i.e.* more than one-third of the total strength of the undivided Party as required under the law, the Speaker after examining the matter and satisfying himself about the validity of the split in the Samajwadi Party, took cognizance of the split and formation of the new Group as the Samajwadi (B) in the Assembly *vide* his order dated 3 November 1999.

Subsequent Development

On 26 January 2001, Shri Bashir Moosa Patel, submitted another communication to the Speaker informing him that the newly formed Samajwadi (B) Party had decided to merge with the Nationalist Congress Party. Shri Sachin Ahir,

the Whip of the Maharashtra Nationalist Congress Party, *vide* his letter dated 8 February 2001 informed the Speaker that the lone member of the Samajwadi (B) Party, Shri Bashir Moosa Patel, MLA had joined the Nationalist Congress Party and the Nationalist Congress Party had admitted him in the Party. On 28 February 1999, the Speaker after having satisfied himself that the claim for merger was valid in terms of provisions of para 4 of the Tenth Schedule, allowed the merger of the Samajwadi (B) Party with the Nationalist Congress Party.

Samajwadi Party Merger Case (Maharashtra LA, 2001)

Claim of merger by lone MLA of Samajwadi Party with Nationalist Congress Party – Confirmed by party being merged with – Found valid in terms of para 4 of Tenth Schedule – Allowed

Facts of the Case

On 8 October 2001, Shri Nawab Malik, the lone MLA belonging to the Samajwadi Party, submitted a communication to the Speaker intimating that his Party had merged with the Nationalist Congress Party. The Leader of the Nationalist Congress Party, in his letter dated 8 October 2001 addressed to the Speaker, also confirmed the facts regarding merger.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Arun Gujarathi, gave his decision dated 8 October 2001 under the Tenth Schedule in the matter. As the communication was given to the Speaker by Shri Malik in person and the merger fulfilled requirements of para 4 of the Tenth Schedule to the Constitution, the Speaker found the merger valid. Accordingly, the Speaker allowed the merger.

Narayan Pawar and Others Case (Maharashtra LA, 2002)

Petitions filed against 3 members seeking their disqualification on the ground of having voluntarily given up membership of Nationalist Congress Party – Respondents asked to furnish comments within two days instead of stipulated seven days – Respondents moved the Mumbai High Court – During pendency of matter before the Court respondents filed application before Speaker seeking extension of time to furnish comments – Speaker granted partial extension of time – Writ Petition in High Court dismissed – Speaker in his decision held : Rules framed to curb the menace are directory rather than mandatory – Further Held : substance is more important than form in application of Rules – Respondents disqualified – Appeal in Supreme Court – Interim Order allowing respondents to attend proceeding but not to speak or vote; – Stay vacated and SLP dismissed.

Facts of the Case

On 4 June 2002, Shri Sachin Ahir, MLA, filed three petitions before the Speaker, Maharashtra Legislative Assembly praying for disqualification of *Sarvashri* Narayan Pawar, Narsing Patil and Shivajirao Naik, MLAs, for being members of the Maharashtra Legislative Assembly for having voluntarily given up membership of their original political party, *i.e.* Nationalist Congress Party (NCP).

It was *inter alia* averred in the petitions:

(a) that, the respondents were elected to the Assembly on the ticket and symbol of the Nationalist Congress Party ;

(b) that, on 23 April 2002, the Disciplinary Committee of the NCP passed a resolution directing its members not to give any statements etc. that could tarnish the image of the party or could otherwise be harmful to it;

(c) that, on 4 June 2002, *vide* a letter submitted to the Governor of Maharashtra, the respondents withdrew their support to the Democratic Front Government constituted by the Indian National Congress and the Nationalist Congress Party ;

(d) that, the facts regarding withdrawal of support and their alleged joining of the Shiv Sena Bharatiya Janata Party were widely publicized by the

media;

(e) that, by this act, the respondents had voluntarily given up the membership of their original party, *i.e.* the NCP and thus, had become subject to disqualification for being members of the Legislative Assembly.

The petitioner enclosed with his petitions copies of news items carried by the Press and copy of the above-said letter sent by the respondents to the Governor of Maharashtra.

On carefully going through the petitions, the Speaker found that the same were duly signed and verified as required under sub-rule 6 of the Rule 6 of the Members of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, (hereinafter referred to as Anti-Defection Rules). Moreover, from the declarations given by the respondents in Form No. III as per Rule 4 and entries in the Register in form No IV as per Rule 5 of the Anti-Defection Rules, it was clear that the respondents were elected on the ticket and symbol of the NCP.

Finding that the petitions were in order, the Speaker as per Rule7(3) of the Anti-Defection Rules, 1986 directed his office to issue summons to the respondents asking them to submit their replies. The said Rule envisages seven days' time for submission of reply. However, in view of the fact that the Governor had directed the Chief Minister to prove his majority in the House latest by 14 June 2002, the Speaker in exercise of the discretion conferred upon him in this regard under the provisions of Rule 9 of Anti-defection Rules, 1986 decided to give the respondents two days' time for their replies.

Instead of filing their replies or requesting for any extension for submitting the same, the respondents filed in the High Court of Mumbai Writ Petitions. After partial hearing thereof by the Hon'ble High Court on 7 June 2002, the respondents approached the Speaker on 8 June 2002 and submitted applications for extension of the time till 6.00 p.m. on 14 June 2002, or in other words, until after the scheduled voting in the Assembly Session on the Motion of Confidence on 13 June 2002. The Speaker, however, gave them extension till 11 a.m. of 11 June 2002. Subsequently, on 11 June 2002, the Hon'ble High Court dismissed the writ petition filed by the respondents.

On 11 June 2002, the respondents appeared before the Speaker along with their Advocates and filed their respective statements of defence. The respondents *inter alia* contented:

(i) that, grant of less than seven days, for filing their response was contrary to law;

(ii) that, the annexures were not verified as required under Rule 6 (6) of the Anti-defection Rules;

(iii) that, the copies of the notice served on them were incomplete and that they received the same at 9.00 a.m. on 11 June 2002;

(iv) that the allegations were devoid of the required material facts and particulars;

(v) that, they had not accompanied the Opposition leaders to meet His Excellency the Governor of Maharashtra and that they had not given publicity to it in the electronic and print media;

(vi) that, although they had submitted a letter to the Governor on 4 June 2002, the petitioner misinterpreted the contents of their letter to project that they had withdrawn their support to the Government;

(vii) that, the Disciplinary Committee of their party had not passed any resolution on 23 April 2002 and that in any case the same was not brought to their knowledge.

On the basis of these averments, the respondents requested the Speaker for summary dismissal of the petitions.

On the basis of averments made by the petitioner and replies filed by the respondents, the following issues emerged for consideration in the case:

(i) whether the petitions deserved to be summarily dismissed on ground of non-compliance of the provisions of Rule 6(4), Rule 6 (6) and Rule 7(3)?

(ii) whether the respondents had become subject to disqualification of the House for voluntarily giving up membership of their original party ?

During the oral evidence on 11 and 12 June 2002, the Advocate for the respondents *inter alia* contended that the word used in Rule 6 is "shall" and so those provisions are not directory but mandatory and therefore, any failure to comply with them was bound to result in dismissal of the petition. Moreover, under the concept of Rule of Law, the Speaker was also bound by the rules framed by him. It was further stated that the interpretation and effect of the contents of the letter dated 4 June 2002 were deliberately misinterpreted by the petitioner and that they did not amount to withdrawal of their support to the Government. The act of the petitioner only reflected dissatisfaction and grievances.

In response to these contentions, the Advocate of the petitioner *inter alia* argued that the rules might be interpreted and observed in their spirit and substance and not in their literal sense.

After considering the provisions of the Tenth Schedule, provisions of the Assembly Anti-defection Rules and arguments, averments of petitioner and the

respondents, the Speaker *inter alia* took cognizance of following facts/factors:

(i) that, the ruling of the Supreme Court in their Judgement in the Kihota Hollohon Case that the provisions of the Tenth Schedule to the Constitution are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections are followed in all the subsequent judgements of the Supreme Court;

(ii) that, in the case of Dr. Kashinath Jhalmi, it was held by the Supreme Court that the action under Rule 6 could be brought by anybody although the sub rule (2) thereof specifically refers to any other member only. Thus, in other words, the rules are directory rather than mandatory;

(iii) that, in the case of Shri Ravi Naik, the Supreme Court held that the rules are only procedural in nature and any violation thereof would amount to an irregularity in procedure and not any illegality as such, and certainly not any violation of the constitutional mandate, and therefore, cannot, by themselves, be fatal to the petition itself;

(iv) that the procedure is only a hand-maid of justice, and not the mistress of justice;

(v) that, what is most crucial is the consideration of substance rather than form; and

(vi) that, the said fair and reasonable opportunity of defence should not and cannot by protraction of time be extended and allowed to defeat the ends of justice and fair play in the context of maintaining and strengthening the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

Decision of the Speaker

Regarding the crucial issue of merit, the Speaker took into consideration the fact that the respondents had admitted in their written statement of defense itself that they had signed and delivered the letter dated 4 June 2002 in person to the Governor of Maharashtra. The said letter, according to the Speaker, in effect and substance meant that the respondents had withdrawn support to the Government in which their original Party was a constituent member. The Speaker further held that giving of the said letter by the respondents to the Governor certainly amounted to voluntarily giving up their membership of their original Party, as contemplated in paragraph 2(1) (a) of the Tenth Schedule to the Constitution. Besides, the Speaker also did not accept respondents' contention that the reports carried by the print and

electronic media regarding the fact that the Opposition leaders had accompanied them when they delivered the said letter to the Governor were wrong. The Speaker held that even without going into this aspect of the matter, the said letter by itself was sufficient to hold that the respondents had voluntarily given up their membership of their original Party. Thus, in the light of the admitted facts and the view of law held by him, the Speaker held as under :

> "I, therefore, declare that the said Shri Narayan Pawar, Shri Narsing Patil and Shri Shivaji Naik stand disqualified under article 1991 (2) read with the Tenth Schedule of the Constitution with effect from 4 June 2002, and that their seats have fallen vacant as per article 190 (3) thereof since then, and I direct that this decision be reported to the Assembly forthwith when the Assembly reassembles on 13 June 2002 and also be published in the Bulletin and notified in the Official Gazette and its copies be forwarded by the Secretary to the Election Commission of India also to the Chief Electoral Officer, Maharashtra State."

Consequential Action

As directed by the Speaker, the Order was published in the Vidhan Sabha Bulletin and Gazette of the State of Maharashtra.

Subsequent Developments

As stated earlier, the respondents *vide* their writ petitions filed before the Hon'ble High Court challenged the proceedings in their case. The Hon'ble High Court, however, dismissed the Petitions. It was against this judgement of the High Court that the respondents filed Writ Appeals in the Supreme Court against the order of the High Court of Mumbai. The Hon'ble Supreme Court *vide* an interim order observed that the appellants would be entitled to attend the proceedings, but they would not be entitled to speak or vote. Later the Appeal was dismissed.

Shirishkumar Vasantrao Kotwal Case (Maharashtra LA, 2002)

Petition seeking disqualification filed for voluntarily giving up membership of Nationalist Congress Party – Respondent directed to submit reply within two days in place of stipulated seven days-Application for extension of time for filing replies by respondent – Contended : Speaker unlawfully linking up petition with Motion of Confidence – Speaker permits partial extension of time – Held: inference from conduct of respondent could be drawn that he had voluntarily given up his membership – Petition allowed – Respondent disqualified – Writ Petition in High Court – Dismissed – Appeal in Supreme Court – Dismissed.

Facts of the Case

On 4 June 2002, Shri Sachin Ahir, M.L.A., *vide* a petition filed before the Speaker, Maharashtra Legislative Assembly under Rule 6 of Assembly Anti-Defection Rules, 1986 read with the Tenth Schedule to the Constitution of India prayed for disqualification of Shri Shirishkumar Vasantrao Kotwal, M.L.A. for having voluntarily given up membership of his original political party *viz.* the Nationalist Congress Party or NCP.

It was *inter alia* averred in the petition that the respondent was elected to the Assembly on the ticket and symbol of the Nationalist Congress Party. It was further submitted that, on 23 April 2003, the Disciplinary Committee of the NCP *vide* a resolution directed its members not to give any statement, which could tarnish the image of the Party or could otherwise be harmful to the Party. Thereafter, violating this directive, the respondent *vide* a fax sent to the Governor of Maharashtra, withdrew his support to the Government headed by Shri Vilasrao Desmukh. This act amounted to incurring disqualification under para 2(1)(a) of the Tenth Schedule read with the Assembly Anti-defection Rules, 1986. The petitioner, therefore, prayed for his disqualification from being member of the Assembly.

After carefully examining the facts in the petition and entries in Form III and Form IV filed by the respondent and the Leader of the NCP in Assembly, it was established that the respondent had been elected on the ticket and symbol of the

NCP. Accordingly, the Speaker caused forwarding of the copy of the petition to the respondent under Rule 7(3) of the Assembly Anti-defection Rules, 1986 for his comments. The said Rule stipulates seven days time for furnishing of comments. However, as the Hon'ble Governor of Maharashtra had directed the Chief Minister to prove majority of his Government within ten days, *i.e.* latest by 14 June 2002, the Speaker allowed only two days time for filing reply, as was given and upheld in the case of Ravi Naik *vs.* Union of India. In this connection, the Speaker also referred to Rule 9 of the Assembly Anti-defection Rules, 1986, which confers discretion on him in such matters.

In response to the afore-said notice, the respondent prayed for extension of time. Accordingly, the Speaker granted extension till 12.00 noon on 12 June 2002. Again on 10 June 2002, the respondent *vide* his five-page application sought extension of time, which was rejected by the Speaker's verbal order. Later, *vide* written reply filed on 12 June 2002, the respondent *inter alia* stated :

(i) that as per Rule 7 of the Assembly Anti-Defection Rules, 1986, a minimum seven day's notice was required;

(ii) that, as the summons were pasted on the outer door of his house and not given to him, he did not know about the same;

(iii) that, he did not receive the complete set of the original petition;

(iv) that, the Speaker was unlawfully linking up the petition of disqualification with the Motion of Confidence, which was scheduled to be held on 13 June 2002.

On 12 June 2002, the learned Advocate of the respondent appeared before the Speaker. His main contention was that due to hospitalization of the respondent, time for filing reply should be extended. Further, he objected to subsequent changes in the petition by the petitioner. The Speaker, however allowed these changes. On being suggested that a Commission could go to the hospital to record deposition of the respondent, the Advocate declined to do so.

The basic issues for decision by the Speaker in this case were:

(i) whether the petition was maintainable in terms of the provisions of the Tenth Schedule?; and,

(ii) whether the respondent had voluntarily given up his membership of his original Party and thus become subject to disqualification?

Decision of the Speaker

Having considered replies, facts, which emerged during the hearing and the decisions rendered by the Courts, the Speaker held that the petition attracted the

provision of paragraph 2(1)(a) of the Tenth Schedule. In this regard, the Speaker also referred to the judgement in the case of Zachilhu vs State of Nagaland wherein it had been stated that a member can voluntarily give up his membership in a variety of ways. He may either formally tender his resignation in writing to his political party or he may so conduct himself that the necessary inference from his conduct is that he has voluntarily given up his membership of the Party to which he belongs. The Speaker also referred to the case of Ravi Naik vs Union of India in which it was held that whether the member has voluntarily given up his membership is a matter of inference to be drawn from the admitted or proved circumstances.

The Speaker on being satisfied that the conduct of the respondent, Shri Kotwal, had proved that he had withdrawn his support to the NCP, held that by allowing changes in the petition, nothing illegal was done. Besides newspaper clippings of newspaper submitted to him also proved the fact that the respondent had voluntarily given up his membership. Delivering his decision, the Speaker held:

> I, therefore, declare that Shri Shirishkumar Kotwal has incurred disqualification under para 2(1)(a) of the Tenth Schedule read with article 191 (2) of the Constitution and thereby his seat in the Assembly has fallen vacant under article 190(3) of the Constitution of India *w.e.f.* 5 June 2002.

Consequential Action

The Speaker's order was published in the Assembly Bulletin and notified in the Official Gazette of Maharashtra.

Subsequent Development

The respondent challenged the aforesaid order of the Speaker in the High Court, which was dismissed. Later, the Supreme Court granted interim relief providing that the appellant would be allowed to attend the proceedings, but he would not be entitled to speak or vote. Later, the Appeal in the Supreme Court was dismissed.

Gangaram Poshetti Thakkarwad Case (Maharashtra LA, 2002)

Petition for disqualification filed for having volnntarily given up membership of Janata Dal (Secular) Party – Respondent pleaded that there was a split in legislature party and contended that there was no need to have split in original political party before split in legislature party – Speaker held: split could not be proved; split in original political party was a condition precedent for split in legislature party – Petition allowed – Respondent disqualified – Speaker's decision challenged in High Court – Dismissed – Appeal in Supreme Court – Dismissed.

Facts of the Case

Shri Gangaram Poshetti Thakkarwad, M.L.A., *vide* his letter dated 6 June 2002, informed the Speaker that consequent upon a split in his original political party, *i.e.* the Janata Dal (Secular), he had left that Party and formed a new Party, *i.e.* the Maharashtra Janata Dal. At the time of split, the Janata Dal (Secular) had two members, namely Shri Gangaram Poshetti Thakkarwad and Shri Dada Jadhavrao. Shri Thakkarwad further submitted that as the new party consisted of more than one-third of the total membership of the undivided Janata Dal (Secular), the concerned provisions under para 2(1)(a) of the Tenth Schedule were not applicable in that case.

Later, on the same day, the Speaker received a petition from Shri Dada Jadhavrao, Whip of the Janata Dal (Secular). The petitioner in his petition *inter alia* made the following submissions.

(i) that the respondent was elected to the Assembly on the ticket and symbol of the Janata Dal (Secular) Party;

(ii) that *vide* a letter sent to the Governor of Maharashtra, the respondent withdrew support to the Government led by Shri Vilasrao Deshmukh;

(iii) that since there was no split in the original political party, *i.e.* Janata Dal (Secular) as per para 3 of the Tenth Schedule, the respondent was not protected under the provisions of para 3 of the Tenth Schedule;

(iv) that it was clear that the respondent had voluntarily given up his

membership and thus became liable for disqualification under paragraph 2(1)(a) of the Tenth Schedule.

In this connection, the petitioner also referred to the Guwahati High Court's decision in the case of Banjak Phom *vs* Tenucho and the case of Mayawati *vs* Markandeya Chand. The decisions in these two cases clearly established that for the purpose of para 3, a split should occur first in the original political party which should be followed by a split in the legislature party.

The hearing was fixed for 12 June 2002. The petitioner, who came with his Counsel, prayed for eight days extension for hearing. Submitting that the petition and the annexure were not duly verified and the notice was received late, the respondent added that the said split occurred in the Office of the Janata Dal (Secular) on 20 or 22 May 2002. He, however, could not produce any documentary evidence, *viz.* agenda, proceedings, resolution or any report in the media regarding the meeting and the split. The Counsel for the respondent also submitted that there was no need to have a split in the original party for effecting a split in the legislature party.

Decision of the Speaker

Considering the matter in the light of the contents of the petition, the facts which emerged during the hearing and decisions rendered by the courts of law in various decided cases including the case of Ravi Naik *vs* Union of India, the Speaker held as follows:

(a) that, the arguments regarding procedural matters in submission of petitions are just irregularities and not illegalities as explained by the Supreme Court in the Case of Ravi Naik *vs* Union of India;

(b) that, there cannot be a valid split in the legislature party in terms of provisions of paragraph 3 of the Tenth Schedule to the Constitution, unless and until there is split in the original political party, as held in the Banjak Case;

(c) that, the respondent could not produce sufficient evidence regarding the said split;

(d) that, the plea of split raised by the respondent was not tenable.

Delivering his decision, the Speaker held as under:

"I, therefore, declare that Shri Gangaram Thakkarwad has incurred disqualification under para 2(1)(a) of the Tenth Schedule read with article 191(2) of the Constitution of India and thereby his seat in the Assembly has fallen vacant under article 190(3) of Constitution of India *w.e.f.*

4 *June 2002."*

Consequential Action

The Speaker's order was published in the Assembly Bulletin and notified in the Official Gazette.

Subsequent Developments

The respondent challenged the said order of the Speaker in the High Court by way of a Writ Petition, which was dismissed. Later, the Supreme Court granted interim relief providing that the appellant would be allowed to attend the proceedings, but he would not be allowed to speak or vote. Later the Appeal in the Supreme Court was dismissed as withdrawn.

Vinay Kore Case (Maharashtra LA, 2002)

Petition seeking disqualification filed for having voluntarily given up membership of Nationalist Congress Party – Respondent contended that he was not a member of NCP and NCP only supported his candidature – Speaker ascertained whether respondent was a member of NCP; and held that membership could be given up in a variety of ways; acts, actions and conducts tantamouting to giving up membership could lead to disqualification ; Respondent's conduct proved that he voluntarily gave up membership of NCP – Petition allowed – Respondent disqualified – Respondent challenged Speaker's order in High Court.

Facts of the Case

On 6 June 2002, Shri Narendra Marutraoji Ghule, MLA, filed a petition under the Tenth Schedule to the Constitution and Rules thereunder to the Speaker, Maharashtra Legislative Assembly wherein he prayed for disqualification of Shri Vinay Vilasrao Kore, MLA for being member of the Assembly for having voluntarily given up the membership of his original political party, *viz* the Nationalist Congress Party (NCP) and joining the Shiv Sena/Bharatiya Janata party combine.

In his petition, the petitioner *inter alia* submitted:

(i) that, the respondent was elected to the Assembly on the ticket and symbol of the Nationalist Congress Party;

(ii) that, on 23 April 2002, the Disciplinary Committee of the said party *vide* a resolution directed its members not to give any statements, etc. which could tarnish the image of the party or could be otherwise harmful to it;

(iii) that, the petitioner *vide* a letter submitted to the Governor of Maharashtra on 4 June 2002 withdrew support to the Democratic Front Government constituted by the Indian National Congress and the Nationalist Congress Party;

(iv) that, the media publicized the news of the said withdrawal of support by the respondent and his alleged support to the Shiv Sena/BJP combine;

(v) that, by voluntarily giving up of his membership, the petitioner had become liable for disqualification under the relevant provisions of the Tenth Schedule to the Constitution of India;

Relevant press clippings and a copy of the letter dated 4 June 2002 addressed by the petitioner to the Governor, Maharashtra were enclosed with the petition.

On carefully going through the petition, the Speaker found that the same was duly signed and verified as required under sub-rule 6 of the Rule 6 of the Members of Maharashtra Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 (hereinafter referred to as Assembly Anti defection Rules). Moreover, from the declarations given by the respondents in Form No. III as per Rule 4 and entries in the Register in Form No. IV as per Rule 5 of the Assembly Anti-Defection Rules, it was clear that the respondent was elected on the ticket and symbol of the NCP.

Accordingly, a notice was issued to the respondent directing him to submit his reply/comments as per the procedure stipulated under Rule 7(3) of the Assembly Anti-defection Rules, 1986. However, since the Hon'ble Governor of Maharashtra had asked the Chief Minister to prove majority of his Government within ten days, *i.e.* latest by 14 June 2002, the Speaker decided to give only two days time instead of seven days time allowed under the Rules. In this context the Speaker cited the observation of the Supreme Court decision in Ravi S. Naik *vs* Union of India Case and provision of Rule 9 of the Assembly Anti-defection Rules, 1986, which conferred upon him discretionary powers in this regard.

The respondent *vide* his written reply dated 12 June 2002, while arguing that he was not a member of the Nationalist Congress Party, sought access to information in Form III and IV maintained in the Legislative Assembly Secretariat. Moreover, he also sought extension of time for submission of his final reply. Accordingly, the Speaker gave him an opportunity to be heard on 12 June 2002. The respondent remained absent on 12 June 2002 and instead was represented by his Counsel who argued *inter alia* that the respondent was elected to the Assembly as an Independent member and was supported by the Nationalist Congress Party. The petition filed against him was, therefore, not tenable.

After carefully going through the facts contained in the petition and replies and the facts, which emerged during the course of hearing, the following issues emerged for consideration:

(i) whether the petition deserved to be summarily dismissed on the ground of alleged non-compliance of provisions of Rules 6(4), 6(6) and 7(3) of Assembly Anti-defection Rules?; and

(ii) whether the respondent, by voluntarily giving up his membership had become liable for disqualification for being a member of the House?

Decision of the Speaker

While considering the first issue, the Speaker ascertained that the election symbol of the respondent was 'clock' and under Rule 4, he *vide* Form No. III had declared himself to be a member of the Nationalist Congress Party. However, no evidence was produced before the Speaker as to how the respondent had been an Independent member of the Assembly. Further, the Speaker also considered in this regard the following facts submitted by the petitioner:

(i) that, during the last two and a half year, respondent's name had been appearing in the list of the Nationalist Congress Party brought out by the Assembly Secretariat;

(ii) that while attending various meetings of the Nationalist Congress Party, he signed for attendance in those meetings;

(iii) that he accepted the whip issued by the Nationalist Congress Party and acknowledged its receipt;

(iv) that *vide* his letter dated 1 June 2001, he instructed the SBI Vidhan Sabha Branch for a monthly deduction of Rs. 500/- towards Nationalist Congress Party Legislative Unit. Photocopies of fees paid by Shri Kore were also attached.

On the basis of the evidence produced before him and also the facts which emerged during the hearing in the case, the Speaker held that the petition did not deserve to be summarily dismissed and it had to be considered on merit in the interest of justice and parliamentary democracy.

Coming to the main point, *i.e.* whether the respondent voluntarily gave up his membership under the provisions of para 2(1) (a) of the Tenth Schedule, the Speaker took into account the judgements of the Supreme Court of India in Zachilhu Khusantho vs State of Nagaland (1993), Ravi Naik vs Union of India (1994), and Kihota Hollohon vs Zachilhu. Taking into account the spirit behind these decisions, the Speaker opined that a member can give up his membership in a variety of ways. He may formally tender his resignation or it may be inferred from his conduct and action that he has voluntarily given up his membership. The Speaker was of the view that the respondent's conduct proved that he had voluntarily given up membership of his original political party, *i.e.* the NCP. By writing a letter to the Governor of Maharashtra in defiance of the policy adopted by his party, the respondent had incurred disqualification under para 2 (1) (a) of the Tenth Schedule

read with article 191 (2).

Delivering his order, the Speaker held as under:

> I, therefore, declare that Shri Vinay Kore has incurred disqualification under Para 2(1)(a) of the Tenth Schedule read with article 191(2) and thereby his seat in the Assembly has fallen vacant under article 190(3) of the Constitution of India w.e.f. 4 June 2002.

Consequential Action

The Speaker's order was published in the Assembly Bulletin and notified in the Official Gazette of the State of Maharashtra.

Subsequent Developments

Shri Vinay Kore, respondent, challenged the said order in the High Court.

Desmond Yates Case (Maharashtra LA, 2002)

Petition for disqualification filed against nominated member, who claimed to be member of Indian National Congress, on the ground of voluntarily giving up membership of his political party and joining another party – Respondent contended that he was a nominated member and did not belong to Indian National Congress – Speaker in his decision held: as per records respondent belonged to INC; it would be inferred from conduct of respondent that he had voluntarily given up his membership of INC – Petition allowed – Respondent disqualified – Writ petition filed in the High Court – Dismissed – SLP in Supreme Court – High Court's order stayed – Stay vacated

Facts of the Case

On 7 June 2002, Shri Rohidas Patil, MLA and Chief Whip of the Indian National Congress Legislature Party filed a petition under the Tenth Schedule to the Constitution and Rules thereunder before the Speaker, Maharashtra Legislative Assembly, wherein he prayed for disqualification of Shri Desmond Yates, a nominated member of the Legislative Assembly, for having voluntarily given up his membership of the Indian National Congress.

In his petition, the petitioner *inter alia* submitted that Shri Desmond Yates had been nominated to the Assembly by the Governor of Maharashtra on the request of the Indian National Congress (INC). Shri Yates was, therefore, a member of the INC. Later, on 6 June 2002, some electronic media carried the news regarding violation of the whip issued by the Indian National Congress by the respondent and his subsequent joining of the Shiv Sena-BJP Group in the Assembly. Contending that the respondent had violated the provisions of article 191 of the Constitution and para 2(1) (a) of the Tenth Schedule, the petitioner prayed for his disqualification. The petitioner enclosed with his petition copies of relevant press clippings and Forms I & III submitted by the leader of the Indian National Congress Legislature Party and respondent respectively.

Considering the contents of the petition and having found that the same were in order, the Speaker caused issuance of a copy of petition with its annexures to the

respondent for his comments.

On 12 June 2002, the respondent *vide* his reply contented that if effected, his disqualification would prove to be prejudicial towards the Anglo-Indian Community of the State. The respondent also brought to the notice of the Speaker certain procedural lacunae in the petition. Further, the respondent *inter alia* submitted:

(i) that, he was nominated as an MLA by the Governor of Maharashtra and not by the Indian National Congress;

(ii) that, he had not joined the Shiv Sena-BJP group;

(iii) that, averments in para 4 of the petition about the alleged whip issued by the INC were not factual;

(iv) that, the petition was clearly pre-mature and, therefore, deserved to be summarily dismissed;

(v) that, averments regarding the alleged telecast on E-TV, Aaj Tak and Doordarshan were not true;

(vi) that, the petitioner did not declare the list of witnesses and the petition was not verified as per Rule 6 of the Assembly Anti Defection Rules, 1986; and

(vii) that, no cause of action had arisen for filing and entertaining the petition.

The Speaker heard the matter on 12 June 2002. The petitioner and the respondent who had appeared with their Counsels were given opportunity to present their viewpoints.

After carefully going through the written statements and arguments, the Speaker in his decision *inter alia* held as follows:

(i) the petition was duly signed and verified by the petitioner as required under the relevant provisions of the Assembly Anti Defection Rules;

(ii) irregularities in a petition cannot be treated as an illegality;

(iii) sufficient opportunity was given to the parties to the case and their Counsels to advance their arguments. The petition, therefore, did not deserve to be summarily dismissed and it was tenable and must be considered on merit;

(iv) records showed that on 24 November 1999, the respondent had joined the INC; or.

(v) since it could be inferred that the respondent had joined the Shiv-Sena-BJP Group, it was clear that he had voluntarily given up his membership of the INC.

In this connection, the Speaker also referred to the judgments in Zachillu

Khusantho vs State of Nagaland Case and Ravi S. Naik vs Union of India Case which clearly established that it could be inferred from act, action and conduct of a member, that he has voluntarily given up his membership of his political party. Delivering his decision, the Speaker held:

> "I therefore, declare that Shri Desmond Yates stands disqualified under the Tenth Schedule read under article 191(2) and thereby his seat in Assembly has fallen vacant under article 190(3) of the Constitution of India with effect from 7 June 2002."

Consequential Action

The Speaker's order was published in the Assembly Bulletin and notified in the Government Gazette.

Subsequent Development

Shri Desmond Yates *vide* a Writ Petition challenged the said order of the Speaker in the High Court. The High Court, However, dismissed the Writ Petition on 29/30 July 2002.

Meanwhile, on 29 August 2002, a fresh notification was issued filling up the vacancy and nominating Shri Victor Freitas as the representative of the Anglo-Indian community in the House.

On 5 September 2002, Shri Yates filed a Special Leave Petition against the order of the High Court. On 10 October 2002, the Supreme Court passed an interim order directing '*status quo*'. On 1 November, 2002, the Court passed yet another interim order whereby the disqualification was stayed and the disqualified MLA was allowed to attend the proceedings without the right to speak. The Court, in its final order, modified interim orders dated 10 October 2002 and 1 November 2002 and vacated the stay so far as Shri Yates was concerned. The court finally allowed Shri Victor Freitas to function as a member of the Legislative Assembly.

Bharip Bahujan Mahasangh Split Case (Maharashtra LA, 2002)

Claim of split in Bharip Bahujan Mahasangh by all 3 MLAs – Splitaway Group formed new party by the name of Bharip Bahujan Mahasangh (B) – Found valid in terms of para 3 of Tenth Schedule – Taken cognizance of – Members treated accordingly.

Facts of the Case

The Bharip Bahujan Mahasangh Legislature Party had three members in the Ninth Maharashtra Legislative Assembly. On 9 October 2002, these three members, *viz. Sarvashri* Dashrath Motiram Bhande, Ramdas Maniram Bodke and Vasantrao Dodha Suryavanshi, addressed a joint communication to the Speaker informing him that they had formally split from the original Bharip Bahujan Mahasangh and formed a new Group by the name of the Bharip Bahujan Mahasangh (B). They further claimed that the new Group had come into being *w.e.f.* 5 December 2001 and prayed that it be granted recognition in terms of para 3 of the Tenth Schedule.

The issue involved was whether the splitaway Group consisted of not less than one-third of the members of the undivided Bharip Bahujan Mahasangh Legislature Party.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Arunlal Gujarathi, gave his decision dated 5 December 2002 under the Tenth Schedule in the matter. As the communication was given in person by the three members claiming the split and as the splitaway Group consisted of more than one-third of the original Party, as required under the law, the Speaker after examining the matter took cognizance of the split.

(Maharashtra LC)

No information is available.

Manipur

Selkai Hrangchal and Krishna Singh Case (Manipur LA, 1992)

Petition for disqualification on ground of voluntarily giving up membership of Janata Dal Legislature Party having eleven members filed – Allowed – Given opportunity to be heard personally – Respondents did not appear – Members disqualified.

Facts of the Case

On 6 January 1992, Shri Kh. Amutombi Singh, MLA and the Leader of the Janata Dal Legislature Party filed a petition under Rule 3 of the Members of the Manipur Legislative Assembly (Disqualification on the ground of Defection) Rules, 1986 for a decision of the Speaker under paragraph 6 of the Tenth Schedule against Sarvashri Selkai Hrangchal and Th. Krishna Singh, MLAs of the Janata Dal Legislature Party seeking their disqualification from the membership of the Manipur Legislative Assembly.

In his petition, the petitioner contended that the Janata Dal Legislature Party had eleven MLAs including the members mentioned above as the petitioner and the respondents. Two of them were disqualified earlier under the Speaker's order passed on 31 December 1991 in Disqualification Reference No.2 of 1991 for their defection. It was further stated that three other MLAs of the Party were expelled from the Dal on 4 January 1992 for their anti-party activities and for encouraging defection. On 6 January 1992, the respondents apprised the Speaker, gave a press release and also announced through other media that they had voluntarily given up the membership of the Janata Dal. The respondents also informed that they had formed Manipur Janata Dal Group as a result of a split in the Janata Dal Legislature Party on the day, along with those three members who were expelled earlier. The petitioner prayed that the respondents be disqualified as the three members expelled earlier from the party could not be included in the Group formed out of the alleged split in the Party.

In their written comments, the respondents had contended that the letter expelling the three MLAs was back dated. According to the respondents, they

alongwith those three members had made a written claim to the Speaker about their forming a Group as a result of a split in the party consisting of not less than one-third of the nine MLAs of the Janata Dal Legislature Party. As such the disqualification on ground of defection would not apply in their case. They further stated that as a consequence to a proclamation made by the President of India on 7 January 1992 under article 356 of the Constitution placing the State Legislature under suspended animation, the Speaker would not have any jurisdiction and power as provided to him under paragraph 6 of the Tenth Schedule, to decide the question.

Both the parties were to appear before the Speaker for personal hearing on 18 January 1992. On the appointed day, only the petitioner was present and the respondents failed to appear before the Speaker.

Decision of the Speaker

On 30 January 1992, the Speaker, in his decision, held that the respondents had incurred disqualification and therefore, ceased to be the members of the Legislative Assembly. They had become subject to disqualification for defection under paragraph 2(1)(b) of the Tenth Schedule, since they failed to discharge their onus to establish that the disqualification on the ground of voluntarily giving up membership would not apply to their case within the ambit of para 3 of the said Schedule.

On the question of the status of the Speaker's powers under the Tenth Schedule when the State Legislature came under suspended animation due to imposition of the President's Rule, the Speaker observed, "the President's Proclamation dated 7 January 1992 placing the State Legislature under suspended animation has not mentioned anything about the Tenth Schedule and the power and jurisdiction of the Speaker thereunder. As pointed out by the Supreme Court in the operative part of its order dated 12 November 1991 in a bunch of cases relating to the Tenth Schedule, the Speaker acts as a tribunal in quasi-judicial cases and not as a part of the State Legislature while exercising his power under the Tenth Schedule. I hold accordingly that the said proclamation under article 356 of the Constitution does not have the effect of ousting the Speaker from exercising his power under the Tenth Schedule. The contention of the respondents in this regard is without any merit".

Holkhomang Haokip Case (Manipur LA, 1992)

Petition for disqualification on ground of voluntarily giving up the membership of Congress (S) Legislature Party (6 members) against a member filed – Allowed – Given opportunity to be heard in person – Member disqualified.

Facts of the Case

On 6 January 1992, *Sarvashri* N. Ibomcha Singh and W. Nipamacha Singh, MLAs belonging to Congress (S) Legislature Party, filed a petition to the Speaker under para 6 of the Tenth Schedule under Rule 6 of the Members of Manipur Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 seeking the disqualification of Shri Holkhomang Haokip, MLA. The Congress (S) Legislature Party consisted of six MLAs including the above petitioners and the respondent.

The petitioners contended that Shri W. Jagor Singh along with the respondent were expelled from the Congress (S) Party on 3 December 1991 on account of their anti-party activities and encouraging defection of the party's MLAs. Subsequently, on the representation of party workers and office-bearers assuring his good behaviour the expulsion of the respondent was revoked on 2 January 1992. But on 5 January 1992, the respondent announced in public that he had given up voluntarily the membership of the Congress (S). It was also stated that the respondent along with two other Congress (S) MLAs had apprised the Speaker of this development on 4 December 1991. The respondent, to whom a copy of the petition was forwarded, furnished his written statement on 16 January 1992 contending that consequent upon the proclamation issued by the President under article 356 of the Constitution of India on 7 January 1992, placing the State Legislature under suspended animation, the Speaker had ceased to have any jurisdiction and power to decide the question as to the disqualification of a member of the House under paragraph 6 of the Tenth Schedule. He also denied that he and Shri W. Jagor Singh MLA were expelled from their original political party on 3 December 1991. He asserted that on 4 December 1991 he, the said W. Jagor Singh and Shri Chungkhokai Doungel, who were MLAs of Congress (S) Legislature Party had

caused a split and formed a group constituting one half of the total strength of six MLAs of the Congress(S) Legislature Party, and as such the respondent should not be disqualified in view of the provision of paragraph 3 of the Tenth Schedule. On 18 January 1992, both the parties were given personal hearing. On 30 January 1992, the operative part of the Speaker's decision was announced after giving notice to the parties, on which date the petitioner No. 2 was present, but the respondent was absent. The Speaker held that the respondent had voluntarily given up the membership of Congress (S) and become disqualified for being a member of the House.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, relevant provisions of Law and Rules, the Speaker, Dr. H. Borobabu Singh pronounced the detailed judgement on 17 February 1992. He observed:

> "From the evidence above discussed, the admitted position is that the respondent along with two other MLAs of Congress (S) had voluntarily given up the membership of the party on 4 December 1992. The petitioners have established the facts that the respondent and Shri W. Jagor Singh, were expelled from the party on 3 December 1992, while the third, Shri Chungkhokai Doungel was later disqualified for being a member of the House. Thus, the expulsion of the two MLAs preceeded the claim of the three to have made a split from the party. On the revocation of the expulsion of the respondent, *viz* Shri Haokip, there are 4 MLAs in the Legislative Party of the Congress (S).
>
> It is also quite clear that even after the respondent's membership of the Congress (S) has been restored/revived on 2 January 1992, he has been behaving and acting in such a manner as to reveal that he intends to become a member of the Congress (I) and joins the latter's camp. Regard being had to his express renouncement of his original political party and claim to have become a member of the Congress (I), the inference is irresistible that he has voluntarily given up the membership of the Congress (S).
>
> But the respondent alone out of the remaining members of the Congress (S) Legislature Party numbering four, cannot consist of the one-third of the MLAs of the party. As such his split from the party is indefensible under paragraph 3 of the Tenth Schedule.

The respondent is thus subject to disqualification under paragraph 2(1)(a) of the Tenth Schedule, and he is disqualified for being a member of the Manipur Legislative Assembly."

Basanta Kumar Wangkhem Case (Manipur LA, 1995)

Petition for disqualification on ground of voluntarily giving up membership of Indian National Congress filed – Allowed – Notice issued – Given opportunity for personal hearing – Member disqualified.

Facts of the Case

On 3 July 1995, three members belonging to Congress (I) Legislature Party submitted a petition to the Speaker seeking disqualification of Shri Basanta Kumar Wangkhem, MLA for voluntarily giving up membership of his party, Indian National Congress (I) and also of Congress Legislature Party. It was contended that after the formal merger of the Progressive Janata Dal to Congress (I) *w.e.f.* 27 June 1995 followed by a formal recognition to the same *vide* Bulletin Part II dated 1 July 1995, he gave up his membership of the political as well as the Legislature Party. The petitioners also submitted documents in support of their contentions that the respondent along with others formed a Front called 'United Democratic Front' subsequent to the merger of Congress (I) and Progressive Janata Dal and the formal recognition given thereto by the Speaker. The Speaker allowing the petition, issued show cause notice to the respondent on 3 July 1995, with seven days' time for replying. Since no show cause statement was filed within the specified period, another notice was issued on 18 July 1995, fixing a personal hearing for 27 July 1995. The aforesaid notice was also announced in the broadcast of the All India Radio, Imphal and published in all leading local dailies. Though the respondent appeared for the hearing, he neither submitted show cause statement in writing nor he asked for any extension of time to submit the same.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, submissions and documents, the Speaker, Shri W. Nipamacha Singh his order dated 29 July 1995 disqualified the respondent, Shri Basanta Kumar Wangkhem from being a member of the Manipur Legislative Assembly with immediate effect.

Consequential Action

The decision of the Speaker was published in Bulletin Part II on 29 July 1995.

Subsequent Development

The decision of the Speaker was challenged in the High Court of Guwahati on a Writ Petition. The Court dismissed the petition *vide* its judgement given on 23 July 1996.

T. Gouzadou Case (Manipur LA, 1995)

Petition for disqualification on ground of voluntarily giving up membership of Indian National Congress filed – Allowed – Notice issued – Given opportunity for personal hearing – Member disqualified.

Facts of the Case

On 3 July 1995, two members belonging to Congress (I) Legislature Party submitted a petition to the Speaker seeking disqualification of Shri T. Gouzadou, MLA for voluntarily giving up membership of his party, the Indian National Congress (I) and also from Congress Legislature Party. It was contended that after the formal merger of the National Peoples' Party with Congress (I) *w.e.f.* 27 June 1995 followed by a formal recognition to the same *vide* Bulletin Part II dated 1 July 1995, he gave up the membership of his Political Party. The petitioners also submitted documents in support of their contentions that the respondent along with others formed a Front called 'United Democratic Front' subsequent to the merger and the formal recognition. The Speaker allowing the petition, issued show cause notice to the respondent on 3 July 1995 within seven days. Since no reply was filed within the specified period, another notice was issued on 18 July 1995, fixing a personal hearing for 27 July 1995. The aforesaid notice was also announced in the broadcast of the All India Radio, Imphal and published in all leading local dailies. The respondent neither submitted any reply despite having given sufficient opportunity and time nor did he appear for personal hearing.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, submissions and documents, the Speaker, Shri W. Nipamacha Singh, *vide* his order dated 29 July 1995, disqualified the Respondent, Shri T. Gouzadou for being a member of the Manipur Legislative Assembly with immediate effect.

Consequential Action

The decision of the Speaker was published in Bulletin Part II of 29 July 1995.

Subsequent Development

The decision of the Speaker was challenged in the High Court of Guwahati on a Writ Petition. The Court dismissed the writ petition *vide* its judgement given on 23 July 1996.

Sehpu Haokip Case (Manipur LA, 1995)

Petition for disqualification on ground of voluntarily giving up membership of Indian National Congress filed – Allowed – Notice issued – Given opportunity for personal hearing – Member disqualified.

Facts of the Case

On 3 July 1995, two members belonging to the Congress (I) Legislature Party submitted a petition to the Speaker seeking disqualification of Shri Sehpu Haokip, MLA for voluntarily giving up membership of his party, the Indian National Congress (I) and also from the Congress Legislature Party. It was contended that after the formal merger of the Janata Dal (Sehpu) to Congress (I) took place *w.e.f.* 27 June 1995 which was taken cognizance of by the Speaker *vide* Bulletin Part II dated 1 July 1995, Shri Sehpu Haokip gave up his membership of the Congress (I) Party. The petitioners submitted documents in support of their contentions that the respondent along with others formed a Front called 'United Democratic Front' subsequent to the merger and the formal recognition given thereto. The Speaker allowing the petition, issued show cause notice to the Respondent on 3 July 1995 to reply within seven days. Since no reply was filed within the specified period, another notice was issued on 18 July 1995, fixing a personal hearing for 27 July 1995. The aforesaid notice was announced in the broadcast of the All India Radio, Imphal and published in all leading local dailies. The respondent neither submitted any reply despite having given sufficient opportunity and time nor did he appear for personal hearing.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, submissions and documents, the Speaker, Shri W. Nipamacha Singh *vide* his order dated 29 July 1995 disqualified the respondent, Shri Sehpu Haokip for being a member of the Manipur Legislative Assembly with immediate effect.

Consequential Action

The decision of the Speaker was published in Bulletin Part II of 29 July 1995.

Subsequent Development

The decision of the Speaker was challenged in the High Court of Guwahati on a writ petition. The Court dismissed the writ petition *vide* its judgement given on 23 July 1996.

O. Lohri Case (Manipur LA, 1995)

Petition for disqualification on ground of voluntarily giving up membership of Indian National Congress filed – Allowed – Notice issued – Given opportunity for personal hearing – Member disqualified.

Facts of the Case

On 3 July 1995, two members belonging to the Congress (I) Legislature Party submitted a petition to the Speaker seeking disqualification of Shri O. Lohri, MLA for voluntarily giving up membership of his party, the Indian National Congress (I) and also from the Congress Legislature Party. It was contended that after the formal merger of the Progressive Janata Dal with Congress (I) *w.e.f.* 27 June 1995, followed by a formal recognition to the same *vide* Bulletin Part II dated 1 July 1995, he gave up his membership of his Political Party. The petitioners also submitted documents in support of their contentions that the respondent along with others formed a Front called 'United Democratic Front' subsequent to the merger and the formal recognition. The Speaker allowing the petition, issued show cause notice to the respondent on 3 July 1995 to reply within seven days. Since no reply was filed within the specified period, another notice was issued on 18 July 1995, fixing a personal hearing for 27 July 1995. The aforesaid notice was also announced in the broadcast of the All India Radio, Imphal and published in all leading local dailies. The respondent neither submitted reply despite having given sufficient opportunity and time nor did he appear for personal hearing.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, submissions and documents, the Speaker, Shri W. Nipamacha Singh *vide* his order dated 29 July 1995 disqualified the respondent, Shri O. Lohri for being a member of the Manipur Legislative Assembly with immediate effect.

Consequential Action

The decision of the Speaker was published in Bulletin Part II of 29 July 1995.

Subsequent Development

The decision of the Speaker was challenged in the High Court of Guwahati on a writ petition. The Court dismissed the writ petition *vide* its judgement given on 23 July 1996.

Hangkhanpao Case (Manipur LA, 1995)

Petition for disqualification on ground of voluntarily giving up membership of Indian National Congress filed – Allowed – Notice issued – Given opportunity for personal hearing – Member disqualified.

Facts of the Case

On 3 July 1995, two members belonging to the Congress (I) Legislature Party submitted a petition to the Speaker seeking disqualification of Shri Hangkhanpao, MLA for voluntarily giving up membership of his party, the Indian National Congress (I) and also from the Congress Legislature Party. It was contended that after the formal merger of the Progressive Janata Dal to Congress (I) *w.e.f.* 27 June 1995, followed by a formal recognition to the same *vide* Bulletin Part II dated 1 July 1995, he gave up his membership of his Political Party. The petitioners also submitted documents in support of their contentions that the respondent along with others formed a Front called 'United Democratic Front' subsequent to the merger and the formal recognition. The Speaker allowing the petition, issued show cause notice to the respondent on 3 July 1995 to reply within seven days. Since no reply was filed within the specified period, another notice was issued on 18 July 1995, fixing a personal hearing for 27 July 1995. The aforesaid notice was also announced in the broadcast of the All India Radio, Imphal and published in all leading local dailies. The respondent neither submitted any reply despite having been given sufficient opportunity and time nor did he appear for personal hearing.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, submissions and documents, the Speaker, Shri W. Nipamacha Singh *vide* his order dated 29 July 1995 disqualified the respondent, Shri Hangkhanpao for being a member of the Manipur Legislative Assembly with immediate effect.

Consequential Action

The decision of the Speaker was published in Bulletin Part II of 29 July 1995.

Thangminlien Kipgen Case (Manipur LA, 2000)

Petition for disqualification for voluntarily giving up membership of National Congress Party (NCP) filed – Allowed – Respondents disqualified – Filed writ petition in the High Court – Order of the Speaker stayed – Aggrieved by the Court's Judgement petitioner filed writ petition/Appeal – Dismissed at the admission stage.

Facts of the Case

Shri Kh. Amutombi, MLA filed a petition on 19 June 2000 before the Speaker of the Seventh Assembly, Dr. S. Dhananjoy against Shri Thangminlien Kipgen seeking for his disqualification under the Tenth Schedule to the Constitution and the Rules framed thereunder.

The contentions of the petitioner were that (i) the respondent along with three others were elected to the Assembly on the tickets of the National Congress Party (NCP); (ii) notifications for constituting the Seventh Assembly and dissolution of the Sixth Assembly were issued on 1 March 2000; (iii) on 4 March 2000, the respondent along with others split from the original party and formed another party in the name and style of National Congress Party (O) [NCP(O)] and this split was intimated to the Speaker of the Sixth Assembly who accorded recognition to the party by his order dated 6 March 2000 with retrospective effect *i.e.* from 4 March 2000; (iv) the outgoing Speaker of the Sixth Assembly, Shri Babudhon Singh, who had also been defeated in the election, had no power to take such a decision; and (v) the respondent and his newly formed party NCP(O) subsequently merged with Manipur State Congress Party (MSCP). Accordingly, the respondent had become subject to disqualification under para 2 read with para 3 of the Tenth Schedule to the Constitution.

After examination of the Petition, a show cause notice was issued to the respondent on 29 June 2000. The respondent submitted his reply denying/disputing the contentions of the petitioner.

The case was heard on 22 July 2000. After hearing the parties and on consideration of respective contentions of the petitioner and the respondent and also after considering the documents available before the Speaker, the issues came up for decision were:

(i) whether the respondent could effect a split on 4 March 2000?

(ii) whether the Speaker of the Sixth Manipur Legislative Assembly who was defeated in the election to the Seventh Manipur Legislative Assembly could accord recognition to a split claimed by the elected members of the Seventh Manipur Legislative Assembly?

(iii) whether the respondent and his Party, NCP(O), on the basis of the aforesaid split and recongnition, could merge with the MSCP?

(iv) whether the respondent had voluntarily given up membership of his original political party *i.e.* NCP and had become subject to disqualification? and

(v) whether the Manipur Legislative Assembly (Disqualification on the ground of the Defection) Rules, 1986 is mandatory as alleged by the respondent?

Decision of the Speaker

The Speaker, Dr. S. Dhananjoy delivered his judgment in the case on 17 November 2000. He declared the respondent, Shri Thangminlien Kipgen disqualified for being a member of the Seventh Manipur Legislative Assembly. During the course of judgment while dealing with the issues involved in the case, the Speaker observed on issue (i) above, "the pertinent question is – who can lawfully effect a split within the ambit of para 3 of the Tenth Schedule to the Constitution of India?... Legislature party of a political party is formed by the elected member(s) of a political party. A split can be claimed under para 3 of the Tenth Schedule, only by such member(s) of the House belonging to a political party. A member of the House as referred to in various provisions of the Tenth Schedule would mean and be constructed to be a member who had already become a member of the House after subscribing the oath or affirmation in the form set out for the purpose. Thus, an elected member cannot become a member of the House before taking such oath ... Admittedly, respondent took oath on 8 March 2000 and admitted himself as a member of the Seventh Manipur Legislative Assembly from that day. Prior that date, the respondent remained only as a MLA – elect and as such, the respondent could not form a faction or split in his original political party. Such split would be contrary to the provisions of the Tenth Schedule.

On the issues (ii), (iii) and (iv) above, the Speaker was of the opinion, "the outgoing Speaker, Shri K. Babudhon Singh had no legislative or parliamentary authority under the Constitution of India in respect of the Seventh Manipur Legislative Assembly and I further hold that he had ceased to be the Authority under the Tenth

Schedule to the Constitution of India and as such he had no jurisdiction or competency to accord recognition to the split claimed by the members of the Seventh Manipur Legislative Assembly?".

On issue (v) above, the Speaker observed, "as per the findings of the Supreme Court reported in 1994 Supp (2) SCC 641, I have to hold that the Rules referred to this issue, is procedural in nature, not mandatory. However, I find from the records that all the parties have been given sufficient opportunities and time to submit their documents in support of their contentions and that apart, all the parties were heard at length and as such the contention raised by the respondent in this issue is rejected as contrary to records and settled position of law".

Consequential Action

A writ petition WP(C) 6335/2000 was filed by the respondent against the order of the Speaker in the High Court of Guwahati. The single judge Bench of the Court passed an order on 23 November 2000 where it held, "I accordingly direct as an interim measure that the impugned order of disqualification dated 17.11.2000 of the Speaker of the 7th Manipur Legislative Assembly disqualifying the petitioner from being a member of the 7th Manipur Legislative Assembly under the Tenth Schedule to the Constitution shall remain stayed". ... "the petitioner will be allowed to attend the Assembly, participate in the proceeding and cast his vote as a member of the 7th Manipur Legislative Assembly until further orders."

Aggrieved by the above judgment, Shri Amutombi Singh filed a writ petition in the High Court. This writ petition was heard on 29 November 2000 and the Court dismissed the writ appeal at the admission stage itself.

Chungkhokai Case (Manipur LA, 2000)

Petition for disqualification on ground of voluntarily giving up membership of Nationalist Congress Party filed – Allowed – Heard Personally – Member not disqualified since he disowned the signature taken forcibly – Issues involved declared non-est.

Facts of the Case

On 19 June 2000, Shri D. Shaiza, MLA filed a petition against Shri Chungkhokai Doungel, MLA under the Tenth Schedule to the Constitution and Rule 6(2) of the Members of Manipur Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, seeking for disqualification of the member.

The contentions of the petitioner were that (i) Shri Chungkhokai was elected to the Manipur Legislative Assembly as a candidate for the Nationalist Congress Party; (ii) the respondent defected from his original party immediately after declaration of election results, reportedly claiming a split in the party. The same was recognised by the outgoing Speaker of the Sixth Assembly, Shri K. Babudhon Singh; (iii) Shri Singh being the Speaker of the Sixth Manipur Legislative Assembly had no legislative and parliamentary authority in the next, that is the Seventh Assembly; and (iv) Shri Chungkhokai took oath on 8 March 2000 and signed the declaration in form III as member of the Nationalist Congress Party. Later on, he joined the Manipur State Congress Party and it was published in Bulletin Part-II dated 11 April 2000. This way, the act of the respondent resulted in voluntarily giving up his membership of his original party.

A show cause notice was issued to the respondent and a reply to the same was submitted by him on 19 July 2000.

In response to the contentions of the petitioner, the respondent submitted that (i) in the election held in the Month of February 2000, four MLAs were elected on the National Congress Party tickets. When they were camping somewhere at Keishamthong area on and around 28/29 February 2000, a State Police Commando Group broke into the camp and took away two MLAs forcibly while the remaining fled the camp; (ii) on 2 February 2000, three of the four Nationalist Congress Party MLAs were inducted as Ministers in the Ministry led by Shri W. Nipamacha Singh.

The aforesaid three MLAs claimed a split and formed the Nationalist Congress Party (O) *w.e.f.* 4 March 2000 and the same was given recognition by the outgoing Speaker of the Sixth Assembly; (iii) consequently the respondent remained the only MLA of Nationalist Congress Party *w.e.f.* 4 March 2000; (iv) it was also alleged that at a relevant point of time, the Government also threatened withdrawal of the police protection if the respondent did not support the Government. It was also submitted by the respondent that, he having subjected to such fear psychosis and also considering the prevailing law and order situation in the State, he was compelled to sign on blank papers, arranged and brought by the ruling party. This statement, in substance narrated the circumstances in which the signatures of the respondent were obtained against his will and consent. In other words, the respondent disowned his signature appearing in the claim for split and merger with Manipur State Congress Party (MSCP), the ruling party.

The case was taken up for hearing on 22 July 2000. At the outset, respondent submitted a supplementary statement stating therein that his signature was forcibly taken by the ruling party *i.e.* the MSCP and its alliance. In the course of hearing, a copy of supplementary statement was also furnished to the petitioner. The petitioner submitted that he had no objection if the request/prayer made by the respondent was granted. The petitioner further submitted that in view of the latest development, he was no longer interested in pursuing the case.

Decision of the Speaker

After taking into consideration the circumstances and facts of the case, relevant law and Rules, the Speaker, Dr. S. Dhananjoy, held, by his order dated 2 December 2000, that the respondent did not incur any disqualification under the Tenth Schedule to the Constitution and that he should be treated as a member of his original party *i.e.* Nationalist Congress Party. The Speaker held that the Tenth Schedule speaks about "voluntarily giving up of membership" without any duress, inducement and compelling circumstances"... In the instant case, the Speaker was satisfied that the respondent was compelled to give his signatures on some papers which were later on used in claiming for split and merger. Therefore, the respondent did not voluntarily give up his membership of his original party *i.e.* Nationalist Congress Party.

In the course of his judgment, the Speaker also observed, "it appears that a Legislature Party as defined in para 1 (b) means "The group consisting of all the members of the House" and as such a single member party could not constitute a Legislature Party for the purpose of the Tenth Schedule. Again para 3 says that

when a member of House makes claim that he and other members of a Legislature Party constitute a group representing a faction, would exclude the case of a single member political party from claiming split under para 3 as para 3 is clear that an MLA with other members of the Legislature Party alone could form a faction".

xxx

"When the respondent claimed a split on 6 March 2000, he was the single member of NCP and therefore, any split claimed by the respondent shall be treated as *non-est* in the eye of law and subsequent recognition of such *non-est* split by the outgoing Speaker of the Sixth Assembly shall also be treated as *non-est*. Further, the merger claimed on the basis of *non-est* split/recognition shall also be treated as *non-est* insofar as it relates to the respondent. Thus, I hold that the respondent is not subject to disqualification under the Tenth Schedule".

Democratic Revolutionary People's Legislature Party Merger Case (Manipur LA, 2003)

Claim for merger of Democratic Revolutionary People's (DRPP) Legislature Party consisting of 2 members with the Indian National Congress (I) [INC (I)] – Allowed – Two members belonging to the Party treated as members of INC (I) –DRPP ceased to exist

Facts of the Case

On 15 September 2003, the Legislature Party of the Democratic Revolutionary People's Party (DRPP) consisting of two members namely, Dr. T. Meinya and Shri Nongthombam Biren claimed to have merged with the Indian National Congress (I) [INC (I)] Legislature Party.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the Speaker allowed the merger *w.e.f.* 16 September 2003 and treated the two members belonging to DRPP as members of INC(I) thereby increasing its strength in the Assembly to 33 members. DRPP ceased to exist thereafter.

Consequential Action

The order of the Speaker was published in Bulletin Part II on 13 October 2003.

Meghalaya

B.B. Lyngdoh and Others Case (Meghalaya LA, 1988)

Petition for Disqualification on the Ground of Violation of Whip filed – Allowed – Held – Members did not incur disqualification

Facts of the Case.

On 25 February 1988, Shri S.D. Khongwir, MLA and Leader of Hill People Union filed a petition to the Speaker, Shri P.G. Marbaniang under para 2(1)(b) of the Tenth Schedule and the Rules framed thereunder against five members belonging to the Hill People Union (HPU) *viz.*, Sarvashri B.B. Lyngdoh, S.P. Swer, Anthony Lyngdoh, P.G. Momin and Dhabal Ch. Barman for voting contrary to the party directives on 24 February 1988 when the election of the Speaker was being held and again on 29 February 1988, on the Motion of No-Confidence.

All the five members in their reply had claimed that on 17 February 1988, seven members *i.e.* the above five respondents and Sarvashri Lehinson Sangma and Projend D. Sangma had a meeting in Shillong and decided to split from their original party *i.e.* HPU and form a new political party called Hill People Union (B)[HUP (B)]. Three office-bearers of the Party *i.e.* the leader (B.B. Lyngdoh), the Secretary (S.P. Swer) and the treasurer (Shri Anthony Lyngdoh) were also elected in the meeting. The then Chief Minister, Shri P.A. Sangma was also invited to the meeting and the decision of their party *i.e.* HPU (B) to extend its support to the Government was conveyed to him. In support of their contention, besides oral evidence, Respondents had submitted the proceedings of the meeting of 17 February 1988; letter dated above signed jointly and submitted to the Governor by the members; letter dated 19 February 1988 written by Shri B.B. Lyngdoh to the Secretary, Meghalaya Legislative Assembly requesting that the Hill People Union (B) be allotted separate sitting arrangements in the House, etc.

As against this, the petitioner, Shri Khongwir had claimed that there was no split in Hill People Union Party at any point of time; that even it were so, the Legislature group of the Party lacked the requisite strength of one-third in order to attract the provisions of paragraph 3 of the Schedule; and that the proceedings of

17 February 1988 of the Hill People Union (B) Party was a manufactured document as it was issued only under the signature of the Leader and the Secretary of the Party. He further contended that letters addressed to the Governor and the affidavit sworn in by the Chief Minister, Shri P.A. Sangma could not be taken into account for the purpose of the decision of the question in issue, *i.e.* disqualification of the members.

In view of above, the issues before the Speaker were: (i) Whether they had prior permission of the Party to vote against the Whip; (ii) Whether the Party had condoned their action of voting against the Whip within 15 days of their doing so; and (iii) Whether as per paragraph 3 of the Tenth Schedule, they formed a separate group arising out of a split in the original party prior to the date of voting, and the strength of such group was not less than one-third of the strength of the original party.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, relevant provisions of law and the Rule and also giving personal hearing, the Speaker referring to the contention as to whether a split in the original political party would be a condition precedent for the defense, under paragraph 3 of the Tenth Schedule, *inter alia* observed the following on 21 November 1988:

> "Under the Tenth Schedule of the Constitution, a Speaker is not authorized to decide a split as such, in a political party and, if he attempts to do so, it would certainly amount to usurping powers of different constitutional mechanisms, like Election Commission and Courts of Law. The role of a Speaker, for the purpose of the Tenth Schedule with reference to a split, starts from the point when a member claims that he along with other members constitute a new Group, as a result of split, in the original political party. The test, which a Speaker would apply for the purpose of the Tenth Schedule, is stipulated in the Schedule, itself, in no uncertain terms. The sole test is whether the Group constituted at a relevant point of time, consisted of at least one-third of the original political party. If on the strength of evidence available, a Speaker is satisfied that the newly constituted Group was at least one-third of the strength of the legislature party, the Speaker is bound to hold that there was a split in the political party, for the purpose of the Tenth Schedule but for no other purpose.

With regard to the contention of the petitioner that the proceedings of the Hill

People Union (B) paper was manufactured as it did not bear the signatures of all the breakaway members, he held:

> "It is obvious from the expression "where a member of a House makes a claim" that even an individual member of a House can make a claim that he and any other member of his Legislature party constitute a Group. The other members, whom he claims to be his companions, may or may not sign the claim put forward by the individual member, in support of his contention. If he signs the claim put forward by the other member it would be of an evidential value but if he does not sign the same, the claim itself will not suffer from any legal lacuna. When such a claim is received in defense of the charges levelled under paragraph 2(1)(b) of the Schedule that will have to be examined and weighed, in light of the evidence available."

Finally with regard to issue No. (i), (ii) and (iii), he opined:

> "In order to decide whether the five Hon. members can be covered under paragraph 3 of the Tenth Schedule, the sole question of importance is, whether there was a split in the Hill People Union political party and new party was formed consisting of not less than 1/3rd of the strength of the Hill People Union Legislature party, prior to the both dates of voting *i.e.* 24 and 29 February 1988.
>
> It is obvious that evidences are heavily against the complainant and, in favour of the five members, so far as giving them protection under Paragraph 3 of the Tenth Schedule is concerned, I am therefore, satisfied that the complaints dated 25.2.1988 and 1.3.1988 by Shri Khongwir do not stand on merits and I hold under para 6 of the Schedule that the five members *i.e.* Shri B.B. Lyngdoh, Shri S.P. Swer, Shri Anthony Lyngdoh, Shri P.G. Momin and Shri Dhabal Ch. Barman have not incurred any disqualification under sub-paragraph 1(b) of paragraph 2 of the Tenth Schedule to the Constitution of India, as they are protected under paragraph 3 of the said Tenth Schedule."

Lehinson Sangma Case (Meghalaya LA, 1988-89)

Petition for disqualification on ground of violation of whip filed – Allowed – Member disqualified – Writ petition against the order of the Speaker filed.

Facts of the case

On 9 March 1988, Shri S.P. Swer, MLA and Whip of the Hill People Union (B) [HPU(B)] filed a petition to the Speaker, Shri P.G. Marbaniang under para 2(1) (b) of the Tenth Schedule and the Rules framed thereunder against Shri Lehinson Sangma for voting contrary to the party directives on the floor of the House during a No-confidence Motion on 29 February 1988.

Shri Swer stated in his petition that as per decision of the Hill People Union (B) [HPU(B)] Party, a whip was issued on 26 February 1988, directing all the MLAs belonging to the said Party, to vote against the No-confidence Motion fixed to be tabled on 29 February 1988, in the Meghalaya Legislative Assembly. Despite this whip, two MLAs belonging to the Party, namely, *Sarvashri* Lehinson Sangma and Projend D. Sangma voted in favour of the No-confidence Motion. He further submitted that the above two MLAs by violating the party direction and whip, incurred disqualification for being members of the Meghalaya Legislative Assembly, under paragraph 2(1)(b) of the Tenth Schedule to the Constitution. It was further revealed that in the case of Shri Projend D. Sangma, his lapse was condoned in the party meeting held on 15 March 1988, and this fact was communicated to the Speaker by Shri S.P. Swer, Secretary and Whip of the Hill People Union (B) Party on the same day and he was therefore protected under the exemption laid down in paragraph 2(1)(b) of the Tenth Schedule to the Constitution.

It was also stated in the petition that Shri Lehinson Sangma participated in the formation of HPU (B) Party on 17 February 1988 in a meeting held in Shillong. In this meeting, office bearers of HPU (B) Party were also elected including the Leader of the Party, Shri B.B. Lyngdoh. Later, on Shri Lehinson Sangma wrote to the Hon'ble Governor accepting Shri B.B. Lyngdoh, as his leader. However, he chose to again leave the HPU (B) Party on 19 February, 1988 and wrote again to the Hon'ble Governor withdrawing his earlier letter.

Defending his stand, Shri Lehinson Sangma stated that he participated in the meeting held on 17 February, 1988 but he was under misconception that the whole HPU Party would support the formation of Congress (I) Government and he did not accept Shri B.B. Lyngdoh as his leader but only appreciated his dynamic leadership.

Before the Speaker could give his decision, it was intimated to him that the complaint against Shri Lehinson had been withdrawn on 15 October 1988 by his original political party.

The issues to be decided by the Speaker were (i) whether a petition seeking disqualification already filed can be withdrawn; and (ii) whether Shri Lehinson had incurred disqualification for having defied the party whip by voting contrary to the part directive on the floor of the House during the No-confidence Motion on 29 February 1988.

Decision of the Speaker

The Speaker, Shri P.G. Marbaniang delivered his judgement on 22 August 1989 disqualifying Shri Lehinson Sangma under para 2 (1) (b) of the Tenth Schedule and the Rules framed thereunder for voting contrary to the party directives. Referring to issue no (i) during the course of judgement, the Speaker observed:

"It is necessary to see the legal position regarding the withdrawal of a complaint under the Tenth Schedule to the Constitution of India, before pronouncing decision which was reserved due to withdrawal of the complaint by the original political party...There is no provision of withdrawal of a complaint under the Tenth Schedule to the Constitution of India. Therefore, the natural inference would be that withdrawal of a complaint cannot be entertained under the schemes of the Tenth Schedule to the Constitution of India. At best it can be taken as a constructive condemnation as envisaged under paragraph 2(1) (b) of the Tenth Schedule. If it is taken as constructive condemnation a withdrawal can be entertained but only within the prescribed limit of fifteen days. After the prescribed limit of 15 days, the Speaker's hands are tied to entertain any such withdrawal under the scheme of the Tenth Schedule and doing so would be acting against the Constitution of India. The legal position being this, a duty and responsibility is cast upon me to pronounce my decision on merit..."

As regards issue no. (ii), the Speaker observed:

"...In view of the fact that Shri Lehinson Sangma attended the meeting of the formation of HPU (B) Party, joined the group of seven members and publicly

accepted the stand taken by the Group and intimated the same in writing to the Hon. Governor, but later on again changed his stand after two days and violated the whip of the HPU (B) Party (which became his original political party under paragraph 3 (b) of the Tenth Schedule, on the date of voting), I hold that he incurred disqualification under paragraph 2 (1)(b) of the Tenth Schedule to the Constitution of India and I decide so under paragraph 6 of the Tenth Schedule. Consequently, Shri Lehinson Sangma ceases to be a member of the Meghalaya Legislative Assembly with immediate effect."

Consequential Action

A writ petition was filed by Shri Lehinson Sangma in the High Court of Guwahati against the order of the Speaker of the Meghalaya Legislative Assembly.

The petition was withdrawn on 23 December 1992, hence closed.

P.D. Sangma Case (Meghalaya LA, 1988)

Petition for Disqualification on the Ground of Violation of Whip of the Hill People Union (HPU) filed – Allowed – Held – Member did not incur disqualification

Facts of the Case

On 3 May 1988, Shri S.D. Khongwir, MLA filed a petition to the Speaker, Shri P.G. Marbaniang under para 2(1)(b) of the Tenth Schedule and the Rules framed thereunder against Shri P.D. Sangma for violating party directions of his original party, the Hill People Union (HPU) while voting on a Private Members' Resolution for improvement of the capital town of Shillong.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case and relevant law and the rules, the Speaker observed that the Hill People Union (HPU) had a split on 17 February 1988 and a new party named the Hill People Union (B) [HPU (B)] Party was formed. Shri P.D. Sangma became its member from the above date itself. Hence, HPU (B) became his original political party for the purpose of paragraph 3(b) of the Tenth Schedule from that date. Therefore, the erstwhile HPU Party had no jurisdiction to issue a Whip to the Respondent and he was not bound to abide by any such Whip. The Speaker, therefore, held that the petition was out of jurisdiction and without any merit.

Donkupar Roy Siangshai and Others Case (Meghalaya LA, 1991)

Petition for disqualification against Independent members for joining the ruling alliance filed–Since the petition was not in prescribed format, the Speaker passed interim orders – Petitioner then filed his petition in proper format – Allegations established – Members disqnalified–Order of the Speaker challenged in – Supreme Court which stayed the order – Special session of the Assembly convened to seek vote of confidence in the Government – Voting remained undecided – Political stalemate continued – President's rule imposed – Supreme Court set aside the order of the Speaker.

Facts of the case

On 5 August 1991, Shri H.S. Shylla, MLA filed a petition against Dr. Donkupar Roy, Smt. Miriam D. Shira, *Sarvashri* Simon Siangshai, Monindra Agitok and Chamberlin Marak, independent MLAs under the Tenth Schedule to the Constitution for joining H.S.P.D.P. (DL) and HPU (BC), the ruling alliance The petitioner pleaded for their disqualification for having joined the ruling alliance. The Speaker, Shri P.R. Kyndiah decided to pass only an interim order pending final decision, as he was *prima facie* satisfied that there was a valid case for invoking the disqualification provisions under the Tenth Schedule to the Constitution of India. Accordingly, on 7 August 1991, the Speaker passed an interim order in the House:

> "I have examined the complaint lodged by Sh. H.S. Shylla, M.L.A., and *prima facie* facts relating to it. While a final decision will be delivered under para 6 of the Tenth Schedule of the Constitution of India after hearing all the parties concerned at length, I would like to issue an interim order under para 6 of the Tenth Schedule to the Constitution of India as follows:
>
> The voting rights within the Assembly of the following Independent members, that is, (1) Dr. Donkupar Roy (2) Smt. Miriam D. Shira (3) Shri Simon Siangshai (4) Shri Monindra Agitok (5) Shri Chamberlin

> Marak shall remain suspended with effect from the 7 August 1991 till final disposal of the case".

Certain members expressed their resentment over the above interim order mainly on two counts. Firstly, doubting the very jurisdiction of the Speaker to pass an interim order under the Tenth Schedule. Secondly, procedure under the Tenth Schedule read with the Members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 had to be followed before giving decision under the Tenth Schedule.

Subsequently, following the procedure laid down in the Members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988, the petition of 5 August 1991 of Shri Shylla was examined and he was asked to re-submit his petition in proper form under Rule 6 of the Members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 which was done by the petitioner *vide* his petition dated 8 August 1991. On that very day, a copy of the petition was forwarded to the five independent members named in the petition.

Identical replies by all the five Independent members and also additional/ supplementary replies were submitted on 16 August 1991. While in the first reply they asked for documentary evidence alongwith the complaint and 30 days time in order to study these documents and to comment on this, in the additional reply however, they denied joining any political party and asserted that they still remain Independent MLAs.

The issue to be decided by the Speaker was whether the five Independent members were liable to be disqualified having joined political parties and holding ministerial position.

Decision of the Speaker

After taking into consideration all the facts, circumstances and relevant provisions of the law, the Speaker, Shri P.R. Kyndiah *vide* his order dated 17 August 1991 disposed of the points raised by the members about his interim order and gave his final decision disqualifying the said five members from the membership of the Assembly for joining political parties after being elected as Independent members the Speaker observed:

> "So far as the power of the Speaker regarding giving an interim order is concerned, if flows from paragraph 6 of the Tenth Schedule itself, by virtue of which full power of giving decision under the Tenth Schedule in the matter of disqualification is vested in the Speaker. Where a final

> power is vested in an authority, it cannot be said that it is excluded of interim powers because final powers can only be inclusive of interim powers and any legal proposition contrary to that, in my humble opinion is not a sound legal proposition".

So far following the procedure under the Tenth Schedule to the Constitution of India read with the Members of Meghalaya Legislative Assembly (Disqualification on ground of Defection, Rules, 1988, is concerned, I am of the firm opinion that final orders under paragraph 6 of the Tenth Schedule to the Constitution of India can only be given after following these procedures. But an interim order has to be passed on *prima facie* perception of the case by the Speaker on available facts and material. Even in Court proceedings, interim orders do not wait completion of pleadings and they are passed sometimes even *exparte*. However, considering the sentiment expressed by hon'ble members, I feel a duty is cast upon me to give a final decision in the matter at the earliest.

> "I consider it my duty to take appropriate measure to prevent a situation when Independent members may held the Government at ransom and defect the very purpose of the Tenth Schedule to the Constitution of India... It is clear that if any Independent member joins a political party he would incur disqualification. The word 'shall' brings a mandatory force to the legal proposition that if an Independent member joins a political party, he/she must be disqualified. Here, it is noteworthy that there is no provision for condemnation of (joining of a political party by) Independent members under sub-paragraph (2) of paragraph 2 as distinct from the provision about a member of political party where a provision for condemnation is also there and 15 days time is stipulated for this."
>
> "Despite this kind of strict provision about Independent members under the Tenth Schedule, it is not stipulated as to what test can be applied while deciding about the fact of joining a political party by an Independent member. In my opinion, besides other facts which may be on record, the acid test could be two-fold. Firstly, whether an Independent member has made himself amenable to any whip of a political party or a forum of political parties. Secondly, whether such Independent member is sharing an office along with any political party or a forum of political parties. After closely examining the matter, I have satisfied myself that all the five Independent members attract disqualification under the Tenth Schedule on both counts as four of

them namely, Dr. Donkupar Roy, Smt. Miriam D. Shira, Shri Monindra Agitok and Shri Simon Siangshai are still in the Council of Ministers sharing office with the forum of original political parties and, Shri Chamberlin Marak is occupying the office of Government Deputy Chief Whip."

Subsequent Development

The disqualified members jointly moved the Supreme Court of India on 23 August 1991 against the verdict of the Speaker. The Constitution Bench of the Court *vide* its order dated 6 September 1991 stayed the order of the Speaker. A special sitting of the House was summoned on 8 October 1991 to seek a Vote of Confidence by the then Government. The Speaker allowed four of the five disqualified members to attend the session as a means of exercising their rights under article 179 as they still continued to be members of the Cabinet.

However, when the voting on the Confidence Motion was taken up and the counting of votes followed, the Speaker ignored the votes of the four disqualified members, as a result of which there was a tie. Consequently, the Speaker exercised his casting vote in favour of the Opposition and declared the Motion as lost. The political stalemate continued and the President's rule was imposed on 11 October 1991. The Supreme Court finally set aside the Orders of the Speaker on 3 December 1991.

Maysalin War Case (Meghalaya LA, 1998)

Petition for disqnalification on the ground of voluntarily giving up membership of original Party: Hill State People's Democratic Party (HSPDP) filed – Member claimed a split in HSPDP, consisting of 3 members and formation of a new party: HSPDP (M) – Held – Valid case under the Tenth Schedule – Interim order passed placing the member and her voting right under suspension – Subsequently interim order of the Speaker vacated restoring the membership and the voting right of the member – Petition for disqualification dropped as withdrawn by the petitioner – Later on Speaker recognized a split in HSPDP and formation of HSPDP (M) - party merged with Nationalist Congress Party (NCP) - merger taken cognizance of.

Facts of the Case

On 25 June 1998, Shri H.S. Lyngdoh, MLA filed a petition to the Speaker, Shri E.K. Mawlong under Rule 6 of the Members of Meghalaya Legislative Assembly (Disqualification on Ground of Defection) Rules, 1988 against Smt. Maysalin War, MLA for voluntarily giving up membership of her original Party, Hill State People's Democratic Party (HSPDP) and joining UMPF coalition led by Shri D.D. Lapang.

Shri Lyngdoh had stated that HSPDP being a recognized political party of the State had decided to support the UPF coalition under the leadership of Shri B.B. Lyngdoh, Chairman of United Democratic Party (UDP), Bharatiya Janata Party (BJP), Garo National Council (GNC) and other independent MLAs. He also stated that there was no split in HSPDP, which comprised of three elected members.

Defending her stand, Smt. War had claimed that there was a split in HSPDP Legislature Party in the House and resultant formation of a new Legislature Party, *viz.* HSPDP (M) under her leadership. She also requested for a separate seat in the House.

Decision of the Speaker

After taking into consideration all the facts, circumstances and relevant provisions of the law and also having heard both the parties involved in person, the

Speaker decided to pass an interim order, as he was *prima facie* convinced that there was a valid case for invoking the disqualification provision of the Tenth Schedule to the Constitution. Accordingly, on 25 June 1998, the Speaker passed the following interim order and observed:

> "...for the time being I have no option but to pass this interim order by placing Smt. Maysalin War under suspension and also her voting right till a final order is issued by me."

Subsequent Development

The interim order placing Smt. Maysalin War, MLA and her voting right under suspension was withdrawn by the Speaker on 17 December 1998.

While making the announcement in the House the Speaker also observed that since both the parties had reached to an understanding and compromise in the case, he was allowing the petition to be withdrawn as prayed for by the petitioner and the case be treated as closed and dropped.

On 21 October 1999, the Speaker received an application from the member, Smt. Maysalin War claiming a split in HSPDP, both at the level of the original political party and also at the level of the legislature party and resultant formation of a new party in the name and style of HSPDP (M). After taking into consideration the facts, circumstances of the case and the documentary evidence submitted along with the application, the Speaker recognized the split and the new party on 1 November 1999.

On 7 February 2000, Smt. Maysalin War claimed a merger of her Party HSPDP (M) with the Nationalist Congress Party (NCP). The Speaker took cognizance of the merger on 7 March 2000 and treated Smt. War as a member of NCP.

Hill State People's Democratic Party (HSPDP) Split Case (Meghalaya LA, 2000)

Claim of split in original party: Hill State People's Democratic Party (HSPDP) - Formation of a new party: Hill State People's Democratic Party (M) [HSPDP (M)] and subsequent merger of HSPDP (M) into Nationalist Congress Party (NCP) - Allowed - Member deemed to be the member of NCP.

Facts of the Case

On 7 February 2000, the Speaker, Shri E.K. Mawlong received a petition dated 25 January 2000 from Smt. Maysalin War, MLA stating that consequent upon the split in its organisational and legislative wings, at the State level of the Hill State People's Democratic Party (HSPDP), a new political party called Hill State People's Democratic Party (M) [HSPDP(M)] has come into existence. A Resolution in this regard was also passed in a meeting of the Party held on 25 January 2000. The petitioner further stated that necessary steps were being taken to merge the new party into the Nationalist Congress Party (NCP) and requested the Speaker to allow the same.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, relevant law and the rules and also after careful perusal of the documents submitted, the Speaker observed:

> "I am satisfied of the merger of the Hill State People Democratic Legislature Party (M) into the Nationalist Congress Party. Accordingly, I allow such merger, as it does not attract disqualification under paragraph 4 of the Tenth Schedule to the Constitution of India. Henceforth, Smt. M. War, MLA deemed to be the member of the Nationalist Congress Legislature Party in the House and seat be arranged accordingly."

People's Democratic Movement (PDM) Split Case (Meghalaya LA, 2001)

Claim of split in original party: People's Democratic Movement (PDM) - Formation of a new party: People Democratic Movement (CM) [PDM (CM)]- Recognized - Separate seats allotted

Facts of the case

On 2 April 2001, the Speaker, Shri E.D. Marak received an application jointly submitted by Shri C. R. Sangma, MLA and Shri M.M. Danggo, MLA stating that there had been a split of People's Democratic Movement (P.D.M.), consisting of three members, at the organisational level as well as at the legislature party level. It was also stated that many of the members and supporters from different areas had unanimously agreed for the split in the original party and form a new political party, namely, People's Democratic Movement (CM) [P.D.M.(CM)].

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, relevant law and the rules and also after careful perusal of the documents submitted, the Speaker observed:

I am made to satisfy that there has been a split in the original Political Party of the People's Democratic Movement (P.D.M.)...the Legislature Party of P.D.M. consists only of 3 members...one member of the said Legislature Party is sufficient to cause a split at the level of the Legislature Party.

The split of the original Political Party of the People's Democratic Movement (P.D.M.) does not attract disqualification under Para 4 of the Tenth Schedule to the Constitution of India since the split group is consisting of not less than one-third of the members of the Legislature Party.

The newly formed Political Party named and styled as P.D.M.(C.M.) and its Legislature Party is hereby recognized in the House with immediate effect and a separate seat is accordingly allotted.

United Democratic Party (UDP) Split Case (Meghalaya LA, 2001)

Claim of split in original party of United Democratic Party and formation of a new party consisting 8 members called Meghalaya United Democratic Party (MUDP) – Recognised – New Group allotted separate seat.

Facts of the case

In November 2001, United Democratic Party (UDP) had 21 members in the Meghalaya Legislative Assembly. On 27 November 2001, the Speaker, Shri E.D. Marak received a petition signed by eight MLAs namely, *Sarvashri* B.B. Lyngdoh, A.H. Scott Lyngdoh, M.N.Mukhim, S.S. Lyngdoh, S. Siangshai, P.T. Sawkmie, R. Rani and D.P. Iangjuh stating that there was a split in the original party of the United Democratic Party (UDP) and that a new party had come up by the name of Meghalaya United Democratic Party (MUDP) . The members also stated that they had constituted themselves into a new Legislature Group to be known as the Meghalaya United Democratic Legislature Party (MUDLP) and pleaded for its recognition.

Decision of the Speaker

After taking into consideration the facts, circumstances, documents, relevant provisions of the Law and the Rules, the Speaker, Shri C.D. Marak *vide* his order dated 29 November 2001 recognised the split. He also recognised the newly formed MUDLP with immediate effect and allotted separate seats to its members. He also observed that the split in the original party of the United Democratic Party (UDP) was complete and valid. The Party had twenty-one members in the House and eight members of the original strength of twenty-one members formed more than its one-third, and as such, was sufficient to cause a split at the level of the Legislature Party and they were fully protected under para 3 of the Tenth Schedule to the Constitution.

Nationalist Congress Party Split Case (Meghalaya LA, 2003)

Claim of split by six members in their original party: Nationalist Congress Party (NCP) and formation of a new legislature party : Meghalaya Nationalist Congress Legislature Party (MNCLP) – Speaker took cognizance of the split under para 3 of the Tenth Schedule – MNCLP recognised – members allotted separate seats.

Facts of the Case

On 15 December 2003, the Speaker, Shri Martin M. Danggo received a petition signed by six MLAs namely, *Sarvashri* Cyprian R. Sangma, Elstone D. Marak, Brening A. Sangma, Samuel M. Sangma, Beckstar Sangma and Nidhuram Hajong stating that there was a split in the original as well as Legislature Party of Nationalist Congress Party (NCP) and that a new party had come up by the name of Meghalaya Nationalist Congress Legislature Party (MNCLP). The members pleaded for its recognition.

Decision of the Speaker

After taking into consideration the facts, circumstances, documents, relevant provisions of the Law and the Rules, the Speaker *vide* his order dated 17 December 2003 took cognizance of the split and recognised the newly formed party, MNCLP with immediate effect and allotted separate seats to its members. He thereby held that the split in the NCP, both at original and Legislature levels existed and was valid. The NCP originally had fourteen MLAs in the Meghalaya Legislative Assembly and six members who had formed a new legislature party consisted more than its one-third and as such, it was sufficient to cause a split. They were fully protected under paragraph 3 of the Tenth Schedule to the Constitution.

Mizoram

H. Lalruata and Others Case (Mizoram LA, 1994)

Claim for split made by 5 out of 14 members of Mizo National Front (MNF), and recognition to Splitaway Group, *i.e.* Mizo National Front (R) sought – Cognizance of split taken by Speaker – Splitaway Group recognized – Petition for disqualification filed against claimants of split – Disqualification sought under para 2 (1)(a) of the Tenth Schedule for having voluntarily given up membership of their Political Party – Speaker in his decision held that as claim for split was valid in terms of para 3 of the Tenth Schedule, respondents were not liable to be disqualified – Petition dismissed.

Facts of the Case

On 2 May 1994, five out of 14 members of the Mizo National Front (MNF), *viz Sarvashri* H. Lalruata, L.P. Thangzika, Zakhu Hlychho, F. Lalzaula and T. Haranghluta, intimated the Speaker that there was a vertical split in the MNF Political Party as a consequence of which a new group by the name Mizo National Front (R) [MNF(R)] came into being. The members sought recognition to MNF(R) in the House and requested for allocation of separate seats to them in the Assembly. The Speaker after considering the facts and circumstances of the case and the provisions in the Tenth Schedule took cognizance of the split in MNF Legislature Party and directed that separate seats be provided to the members of the MNF(R) in the Assembly.

Subsequently, on 9 May 1994, Shri Zoramthanga, MLA and President, Mizo National Front (MNF), submitted a petition under the Tenth Schedule to the Constitution against *Sarvashri* H. Latruata, L.P. Thangzika, Zakhu Hlychho, F. Lalzuala and T. Haranghlu for having voluntarily given up membership of their original Party. The petitioner prayed for their disqualification from the membership of the Mizoram Legislative Assembly in terms of para 2(1)(a) of the Tenth Schedule.

Thereafter, the petitioner in his second petition dated 16 May 1994

inter alia submitted that consequent upon leaving the MNF Party the respondents had joined the Congress Party. He also contended that they formed the new Group, *i.e.* MNF(R) with the sole view to escape the rigours of the disqualification provisions under the anti-defection law. It was further submitted that the respondents could not have formed the new group on 2 May 1994 as they had participated in the original MNF Party meeting on that day. It was further stated that the letter submitted by the respondents for recognition of the new group did not contain requisite information about the office bearers of the so-called new Group. Alongwith the petition, the petitioner also enclosed copies of some press releases and clippings by way of annexures.

The Speaker after having found that the two petitions were in order caused issuance of a notice dated 23 May 1994 to the respondents directing them to submit their comments thereon.

Thereafter, the petitioner filed yet another petition on 31 May 1994 along with annexure – press releases and press reports – to further substantiate the case against the respondents.

On 9 June 1994, in pursuance to the notice dated 23 May 1994, the respondents submitted their joint written comments. The respondents in their comments contended that on 2 May 1994, being dissatisfied with the policies and programmes of the MNF party, they along with a number of supporters and the office bearers of the MNF Party left that Party and immediately formed the new group, *i.e.* the MNF(R). This fact was communicated to the Speaker *vide* a letter praying for recognition of the new group. Simultaneously, the aforesaid facts were conveyed to the petitioner, who, on 3 May 1994, acknowledged the split in his Party and did not immediately raise any objection. Considering the facts in the light of the procedure laid down under the Anti-defection Law, the Speaker accepted the prayer made by the respondents and recognized the formation of the new group. As regards the preliminary objection of the petitioner that respondents' letter submitted to the Speaker did not contain the name of the office bearers of the new group, the respondents contended that it was not necessary to do so under the prevalent law. They categorically denied having joined the Congress Party. They also attached affidavits signed by the two Secretaries of the MNF Party containing details about the meeting of the dissident Group on May 1994. During the course of the hearing, the respondents filed an additional written statement in response to the petition dated 31 May 1994.

On the basis of averments made in the three petitions filed by the petitioner, the joint written statement and the additional joint statement filed by the respondents,

the Speaker framed the following issues for consideration and decision.

(i) whether there was any split in the MNF Party resulting in a split in the MNF Legislature Party and if so, whether the respondents incurred any disqualification under the provisions of the Tenth Schedule to the Constitution of India as contended by the petitioner?

(ii) whether the case of the respondents was covered by paragraph 3 of the Tenth Schedule to the Constitution of India ?

Decision of the Speaker

Taking into consideration the facts and circumstances of the case, the Speaker, Shri Varivenga, gave a decision dated 22 November 1994 in the matter under the Tenth Schedule to the Constitution. The Speaker in his decision came to the conclusion that a meeting of the dissident Group represented by the respondents actually took place on 2 May 1994 in which a Group consisting of more than one-third members of the erstwhile undivided MNF party formed a new Group MNF(R). He also noted that the allegations regarding joining of the Congress Party by the respondents were not authentic. Regarding documentary evidence adduced by the petitioner, the Speaker observed that it was not possible to rely on allegations and statements made in the press releases and press reports since the same had been annexed without any corroborative materials. He also held that in the absence of any witness, it was difficult to prove the authenticity of the documents produced by the petitioner with his petition dated 31 May 1994.

As regards issue No. (i), on perusal of the relevant judicial pronouncements, and also having gone through the concerned provisions of the Tenth Schedule to the Constitution of India, the Speaker was of the opinion that the claim for split made by the respondents was within the ambit of the para 3 of the Tenth Schedule to the Constitution of India inasmuch as there was a split in the political Party namely, Mizo National Front (MNF), and consequently there was a formation of a new Legislature Group MNF(R), consisting of more than one-third of the total strength of the MNF Legislature Party. The Speaker held that the respondents did not incur any disqualification under the provisions of the Tenth Schedule. In the light of the aforesaid discussion the Speaker also answered the issue No. (ii) in affirmative.

The Speaker finally held :

> "On an independent consideration of the material on record produced before me in the proceedings initiated on the basis of the petitions filed by the petitioner, I do not find any ground whatsoever to revise my

views expressed in the order for allotment of separate seats to the new Legislature Group under the name of MNF(R) : ... As a result, the petitions filed by the petitioner praying disqualification of the Opposite parties for being the members of the Mizoram Legislative Assembly are liable to the be dismissed, they which I accordingly do."

Consequential Action

The Speaker's order was published in the Gazette of the Government of Mizoram and Bulletin of the Assembly.

Nagaland

Setu Liegise Case (Nagaland LA, 1987)

Petition for disqualification on ground of voluntarily giving up membership of Naga National Democratic Party (NNDP) filed – Member Disqualified.

Facts of the Case

On 23 July 1987, Shri Vamuzo, MLA and the Leader of Opposition, Naga National Democratic Party (NNDP) submitted a petition before the Speaker, Shri Chenlom Phom under the Tenth Schedule against Dr. Setu Liegise, MLA for voluntarily giving up membership of his original party *i.e.* the NNDP by which he was set up as a candidate in the General Elections. The petition stated that Dr. Setu had resigned from NNDP and his resignation was accepted by the Party President, Shri T. Aliba Imti. The petition was supported by relevant documents like copy of the resignation tendered *vide* letter of 14 July 1987 and the letter conveying the acceptance of the resignation.

After ascertaining that the petition was in order, a copy of the same was forwarded to Dr. Setu for his comments.

In reply, Dr. Setu Liegise, the respondent, stated *vide* his letter dated 28 July 1987 that it was a fact that he had tendered his resignation from the NNDP and the Party President had accepted his resignation. He further stated that he had nothing to comment on it except to say that he did not deny the fact that he had resigned from the NNDP, the party by which he was set up as a candidate in the General Elections.

The issue for consideration before the Speaker was whether Dr. Setu had incurred disqualification under paragraph 2(1) (a) of the Tenth Schedule.

Decision of the Speaker

Taking into consideration the facts and circumstances of the case in accordance with the provisions contained in the Tenth Schedule to the Constitution and the Rules framed thereunder, the Speaker passed the following order:

"In exercise of the powers conferred upon me under paragraph 6(1) of the Tenth Schedule to the Constitution of India, I... hereby decide that Dr. Setu Liegise who was elected as a member of the Nagaland Legislative Assembly from Western Angami Assembly Constituency and who belonged to Naga National Democratic Party by which party he was set up as a candidate in the election for the Nagaland Legislative Assembly, has become subject to disqualification under paragraph 2(1)(a) of the Tenth Schedule to the Constitution of India for being a member of the Nagaland Legislative Assembly with immediate effect and declare accordingly".

Congress (I) Legislature Party Split Case (Nagaland LA, 1988)

Claim for split in Congress (I) Legislature Party and formation of a new party called Congress Regional – Split recognised.

Facts of the Case

On 30 July 1988, the Speaker, Shri Chongshen received a letter signed by thirteen MLAs belonging to Congress namely *Sarvashri* Kihota Hollohon, Pohwang, N. Yeangphong, K.L. Chishi, N. Eyong, Bangjak Phom, I. Nungshi, S. Yokten, (Dr.) H. Vizadel Sakhoje, A. Lakhimong, A. Nyamnyel Konyak, Joshua and Imtimeren Jamir intimating that they had resigned from the primary membership of the original party *i.e.* N.P.C.C.(I) and also from the Congress (I) Legislature Party. This was allegedly because of non-performance and mismanagement of the state exchequer under the leadership of the party.

All the above thirteen members also appeared before the Speaker on 30 July 1988 on their own volition and signed the register claiming that consequent upon a split in the original party, they had formed a new party called 'Congress Regional', Nagaland.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case and also the requirements under the Law and Rules, the Speaker, Shri Chongshen held on 30 July 1988:

> "in the instant case, as per documents submitted, first there has been a split in the original party as all the 13 signatories out of 34 MLAs constituting more than one-third of the Legislature Party...
>
> * * *
>
> I have therefore every reason and basis to be convinced that there is a split in the original NPCC(I) party as well as in the Legislature Party in the House."

Ngullie and Chubatemjen Case
(Nagaland LA, 1990)

Intimation received regarding expulsion of 2 members from Congress (I) Party having a strength of 36 members in the House – Claim for split in the Congress (I) Party and formation of a new party named Congress (Regional) by 12 members including 2 expelled members – Held after declaration of 2 expelled members as unattached, split not covered under the Tenth Schedule – Hence 10 members disqualified – Aggrieved members submitted representations requesting for revoking of erroneous order – Reviewed – Earlier order revoked – Split and new party recognised – Subsequently Congress (R) merged with Nagaland Peoples Council (NPC) and members belonging to Congress (R) treated as members of NPC.

Facts of the Case

On 14 May 1990, the Speaker received two identical communications from Shri N. Theyo, Vice President, NPCC (I) and Chairman of the Disciplinary Action Committee, NPCC(I), Kohima, intimating that *Sarvashri* T.A. Ngullie and Chubatemjen, MLAs belonging to Congress (I) Party had been expelled from the party for a period of six years by the Congress (I). Later on the same day, the Speaker received another communication from the Chief Minister and the Leader of Congress (I) conveying the above decision of Shri Theyo and requesting that both these members might be declared 'unattached members'. A revised list of members of Congress(I) Legislature Party as required under the relevant Rules was also enclosed.

Subsequently, on 15 May 1990, the Speaker received a letter signed by 12 members of the Congress (I), including the above named expelled members. The ten other members were *Sarvashri* C. Chongshen, Tiamerch, Nokzenketba, S. Sedam, Sethricho, S.K. Sangtam, Tsuknungpenzu, Neiphiu Rio, Pukhayi and K. Kiko. It was stated that they had decided to breakaway from the Congress (I) Party with immediate effect and form a new party under the name and style of Congress (Regional). Therefore, they requested that this breakaway Group be accorded recognition as per the provisions of the Tenth Schedule.

The issue for consideration before the Speaker was whether there was a valid split in the original party as per the provisions under paragraph 3 of the Tenth Schedule.

Decision of the Speaker

After taking into consideration the facts, circumstances of the case and the relevant Law and the Rules, the Speaker pronounced his judgement on 15 May 1990 wherein he observed:

"Before receipt of this communication signed by 12 members of the Congress (I) Legislature Party which also included the names of Shri T.A. Ngullie and Shri Chubatemjen, I had carefully examined the orders issued by the Vice-President, NPCC(I) regarding the expulsion of Shri T.A. Ngullie and Shri Chubatemjen from the Party and the request of the Leader of the Congress (I) Legislature Party requesting that the two members be declared as 'unattached members' and had reached the conclusion that *Sarvashri* T.A. Ngullie and Chubatemjen were duly expelled from the Congress (I) Legislature Party before their intended breakaway, along with 10 others, from the Party. I am, therefore, inclined to hold their subsequent request along with 10 other members to be an afterthought. In view of this and my decision to declare the two members as 'unattached members' they cannot be treated as part of the break-away Group of 12 members. I, therefore, reject the request of the signatories to treat the Group as having caused a split in the original political party by virtue of their commanding 1/3 of the total membership of the Congress (I) Legislature Party. After the expulsion of Shri T.A. Ngullie and Shri Chubatemjen, the Congress (I) Legislature Party is left with an effective strength of 34 members only and hence any breakaway faction from the Legislature Wing to cause a split in accordance with proviso contained in para 3 of the Tenth Schedule of the Constitution will have to command a minimum support of 12 members. In my considered opinion, this is not the case since, excluding Shri T.A. Ngullie and Shri Chubatemjen, who have already been declared as 'unattached members', the breakaway Group commands a strength of only 10 members. Under the circumstances, the Congress (Regional) Party is not recognised as a faction of the Congress (I) Legislature Party arising as a result of split of the Party."

The Speaker also declared all the ten members disqualified under the Tenth Schedule and they, thereby, ceased to be members of the Nagaland Legislative

Assembly. All the members were individually informed about the decision of the Speaker.

Consequential Action

The orders of the Speaker were published in Bulletin Part II of 18 and 24 May 1990.

Subsequent Developments

On 8 August 1990, the Speaker, Shri Thenucho, received representations from the disqualified members pointing out that the Speaker had erroneously issued their disqualification orders which may be revoked. On receipt of the representations, the Speaker went through the records minutely to ensure that the orders of disqualification were issued after scrupulously following the procedure prescribed for the purpose.

The Speaker, after examination of the representation issued the following orders revoking the order issued earlier disqualifying the ten members and declaring two members as 'unattached':

"That orders regarding treating the two members *i.e.* Shri T.A. Ngullie and Shri Chubatemjen as 'unattached members' and disqualifying ten remaining members on the ground that they did not constitute one-third of the total number of members of Congress (I) Party *i.e.* 34 are invalid *ab initio* as the communication regarding split in the Congress (I) Party was received earlier than the letters of expulsion of the two members from the Congress (I) Party. That there has actually been a split in the Congress (I) Party in terms of paragraph (3) of the Tenth Schedule of the Constitution.

That the procedure for disqualifying the 10 members, as laid down in Rule 7(a) (a) and (b) of the members of Nagaland Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986 which is mandatory, was not followed before disqualifying the 10 members.

That the orders passed on 15 May 1990, treating 2 members *viz.*, Shri T.A. Ngullie and Shri Chubatemjen as 'unattached' and disqualifying the remaining 10 members are hereby revoked.

That recognition is hereby accorded to the party under the name and style of Congress (Regional)."

Later on, the Speaker received an intimation in writing from Shri Noke of Nagaland Peoples' Council (NPC) and Shri C. Chongshen of Congress (R) that the Congress (R) Legislature Party in Nagaland Legislative Assembly had merged with NPC. They prayed for the recognition of the merger.

On 27 November 1990, the Speaker approved the merger and held that the members belonging to Congress (R) *viz.*, *Sarvashri* C. Chongshen, T.A. Ngullie, Tiamaren, Chubatemjen, Nokzenketba, S. Sedam, Sethricho, S.K. Sangtam, Tsuknugpenzu, Neiphiu Rio, Pukhayi and K. Kiko be treated as members of NPC Legislature Party with immediate effect.

Konngam and Others Case (Nagaland LA, 1990)

Petition for disqualification on ground of voluntarily giving up membership of Congress (I) Party filed against 5 members - Respondents heard in person – Members disqualified – Writ Petition filed in High Court – Transferred to Supreme Court on a Transfer petition – Supreme Court gave its opinion on various law points involving the Tenth Schedule – Case remitted to High Court for deciding issues raised therein.

Facts of the Case

On 12 December 1990, Shri Kihoto Hollohon, MLA submitted five petitions before the Speaker, Shri Thenucho under the Tenth Schedule to the Constitution against Sarvashri Konngam, Khusatho, T. Miachieo, L. Mekiye Sema and Zachilhu, MLAs allegedly for voluntarily giving up their membership of the Congress (I) Party, their original political party.

The petitioner submitted that aforesaid members had voluntarily given up the membership of their original political party *viz.*, the Congress (I) Party and they had given to the Speaker signed declarations individually agreeing to cause split in their original political party along with some other members of Congress (I). It was contended that as the said five members did not constitute the one-third of the existing strength of Congress (I) MLAs in the House they had incurred disqualification for being members of the House.

After ascertaining that the petition was in order, the Speaker forwarded copies of the petition along with the annexures to the respondents for comments. A copy of the same was also forwarded to the Leader of the Congress (I) Legislature Party. The respondents were also given an opportunity to appear before the Speaker and explain their position on 15 December 1990. During the hearing, the respondents submitted identical letters, addressed to the Secretary, Nagaland Legislative Assembly, stating that they had never submitted petitions to the Speaker for a split in the Congress (I) Legislature Party. They also alleged that such petition, if filed, were forged. They also alleged that the Speaker was being unconstitutional. Shri S.C. Jamir, Leader of the United Legislature Party also reiterated the same *vide* a letter addressed to the Secretary. On this, the Speaker observed that though

there was an attempt to defame him and threaten the Secretary of the Assembly, it was his constitutional duty to decide the question of defection in a detached manner, without being influenced by any consideration of threat, etc.

The issue for consideration before the Speaker were whether the aforesaid five members, or any of them, had voluntarily given up the membership of their original party; and whether they constituted one-third of the total membership of the original political party *viz.* Congress (I) to constitute a split.

Decision of the Speaker

After taking into consideration the facts, circumstances of the case, relevant Law and the Rules, the Speaker while pronouncing his judgement, observed:

> "From the original annexed to the petition it is clear that out of 24 members of the Congress (I) Legislature Party, only 5 members signed the declaration expressing their opinion to give up membership of the Congress (I) Party and therefore by no stretch of imagination can it be a case of split in the original political party. The declarations appended to the petitions have neither been denied by the members concerned nor had they taken the opportunity to reply to the petitions dated 12.12.1990 submitted by Shri Kihoto Hollohon, MLA. The only plea they have taken is that there was no petition addressed to the Speaker by them for split.
>
> The relevant consideration in the present case is whether the MLAs concerned had voluntarily given up their membership of their original Congress (I) Party by signing the declarations appended to the petitions and whether they constitute the 2/3 of the total membership of the original political party, *viz.* Congress (I) to constitute a split.
>
> It is clear from the declarations, which are uncontroverted, that they had decided to voluntarily give up their membership of the original political party namely, Congress (I) Party. Moreover, the pleas they have taken is not inconsistent with the plea set up in the petition.
>
> Furthermore, 5 members do not constitute 1/3 of the original political party which had a strength of 24 in the Nagaland Assembly.
>
> I, therefore, accept the declaration signed by the aforesaid MLAs to be true and accordingly the statements made in the said petitions being uncontroverted are taken as true and correct. That being the position, I am of the opinion that the aforesaid 5 MLAs namely (1) Shri Konngam, (2) Shri Khusatho, (3) Shri L. Mekiye Sema, (4) Shri Zachilhu and (5) Shri T. Miachieo have become subject to disqualification under the Tenth Schedule of the Constitution of India. I hereby declare accordingly."

Consequential Action

The order of the Speaker was published in Bulletin Part-II and the Nagaland Gazette. Copies of the order were also forwarded to the petitioner, the respondents, the Leader of the Congress (I) Legislature Party, the Election Commissioner and the Government of Nagaland.

Subsequent Developments

The case came up for hearing in the High Court of Guwahati as a writ petition first, then in the Supreme Court of India as a Transfer Petition. The Supreme Court took up the case for the purpose of deciding various constitutional issues related to the Tenth Schedule and of declaring the law on the matter.

The petition was then remitted to the High Court for deciding the factual controversies raised therein, applying the principles declared and laid down by the Supreme Court of India in the Kihota Hollohon vs. Zachilhu & Ors. case on 12 November 1991.

Lotha and Others Case (Nagaland LA, 1990)

Two members expelled from Nagaland Peoples' Council Legislature Party having a strength of 35 members in the House – Declared unattached – Expelled members along with 10 others claimed a split in the original party and form of a new party called NPC (Original) – Held split not covered under the provisions of the Tenth Schedule – 10 members disqualified.

Facts of the case

On 13 December 1990, Shri Thenucho, the Speaker received a letter from Shri Vizol, President of Nagaland Peoples' Council (NPC) to the effect that Dr. H.V. Sakhrie and Shri Sedem Khaming, MLAs belonging to the NPC had been expelled from the party with immediate effect for anti-party activities. He further requested that these two members be declared as 'unattached members' in the House. On the same day, the Speaker received another letter from Shri Vamuzo, the Chief Minister and the Leader of the NPC Legislature Party, enclosing a copy of the order issued by the President of that Party and praying that the aforesaid two members might be declared as 'unattached' members in the Assembly. The Speaker declared them 'unattached' on the same day *i.e.* 13 December 1990.

Subsequently, a letter dated 14 December 1990 signed by ten members of the NPC Legislature Party and two "unattached" members was received by the Secretary, Nagaland Legislative Assembly. The ten members were Dr. T.M. Lotha, *Sarvashri* Neakba Konyak, Joshua, S. Sethricho, Pukhayi, Zeliang, Lakiumong, S.K. Sangtam, S. Yokten and Bangjak Phom. They intimated that they had decided to break-away from the NPC Legislature Party with immediate effect and that they had formed a new party under the name and style of NPC (Original). The signatories of the letter had further requested that recognition be accorded to the split as per provisions of para 3 of the Tenth Schedule since they constituted more than one-third of the total membership of the NPC Legislature Party.

The issue for consideration before the Speaker was whether the breakaway faction be accorded recognition as a split in the NPC under the provisions of the Tenth Schedule.

Decision of the Speaker

After giving careful consideration to the facts, circumstances of the case, relevant Law and the Rules, the Speaker passed his order on 15 December 1990. He observed:

> "As I had received the communication regarding the expulsion of these two members from the NPC Legislature Party before I received the letter signed by twelve members for causing a split in the NPC Legislature Party, I have come to the conclusion that Dr. H.V. Sakhrie and Shri Sedem Khaming had been duly expelled from the NPC Party and therefore, I had already declared them as 'unattached' members of the Assembly with effect from 13 December 1990. In view of this, these two members cannot be treated as part of a group of 12 MLAs breaking away from the party. I also requested the remaining 10 members to meet me in my office chamber on 15.12.90 so as to enable me to verify the factual position. However, these ten members declined my request to meet me. I therefore, reject the request of the signatories to treat the group as having caused a split in the original political party by virtue of their commanding 1/3 of the total membership of the said Legislature Party. After the expulsion of Dr. Sakhrie and Shri Sedem, the NPC Legislature Party has been left with an effective strength of 33 members only and hence any breakaway faction from the Legislature party to cause a split in accordance with the proviso contained in para 3 of the Tenth Schedule to the Constitution will have to command a minimum support of 11 members. In my considered opinion, this is not the case since, excluding Dr. H.V. Sakhrie and Shri Sedem Khaming who had already been declared as "unattached" members, the breakaway group commands the strength of only 10 members.
>
> Under the circumstances, the NPC (Original) Party is not recognised as a faction of the NPC Legislature Party arising as a result of split in the party. Therefore in exercise of powers vested in me under sub-para (1) of para 6 of the Tenth Schedule of the Constitution of India, I do hereby decide that these ten members, *viz.*, Dr. T.M. Lotha, (2) Shri S. Neakba Konyak, (3) Shri Joshua, (4) Shri S. Sethricho, (5) Shri Pukhayi, (6) Shri T.R. Zeliang, (7) Shri A. Lakiumong, (8) Shri S.K. Sangtam, (9) Shri S. Yokten and (10) Shri Bangjak Phom have become subject to disqualification

under the Tenth Schedule to the Constitution of India and thereby cease to be members of the Nagaland Legislative Assembly with effect from 15 December 1990. I order accordingly".

Consequential Action

The order of the Speaker was published in Bulletin Part II and Nagaland Gazette. Copies of the order were also forwarded to the Election Commission and the Government of Nagaland.

Democratic Labour Party Split Case (Nagaland LA, 1993)

Claim for split in – Democratic Labour Party and formation of a new party called Democratic Labour Party (S) – Recognised – Lone member of the party in the House merged with Congress Legislature Party – Taken cognizance of.

Facts of the Case

On 25 October 1993, Shri Y. Sulanthung Lotha, MLA belonging to Democratic Labour Party (DLP) addressed a communication to the Speaker intimating that there had been a split in the original party, *i.e.* DLP as a result of which a faction by the name of Democratic Labour Party (S) [DLP(S)] had arisen. Shri Lotha, who was the lone member of DLP Legislature Party in the House also informed that he owed allegiance to DLP(S).

Next day *i.e.* on 26 October 1993, the Speaker received a communication from Shri S.C. Jamir, the Chief Minister and Leader of the Congress Legislature Party conveying that there had been a merger of Congress I and DLP(S) and that Shri Sulanthung Lotha, a member of DLP(S) in the House had been admitted to the Congress Legislature Party and also requested to allot him a seat in the House accordingly.

Decision of the Speaker

Taking into consideration the facts and circumstances of the case, the Speaker passed his order on 11 January 1994, wherein, he held:

> "...Shri Sulanthung Lotha being the lone member in the House belonging to the DLP, the split in the DLP is claimed by him and his admission to the Congress Legislature Party is in order. Shri Sulanthung thus has become a member of the Indian National Congress (Congress-I) and the Indian National Congress (Congress-I) shall be deemed to be the political party to which he belongs *w.e.f.* 26 October 1933 for the purpose of sub-paragraph 1 of para 2 of the Tenth Schedule and it shall be considered his original political party for the purpose of para 4 of the Tenth Schedule."

Nagaland Peoples Council Split Case (Nagaland LA, 1994)

Claim for split in – Nagaland Peoples Council and formation of a new party called Nagaland Peoples Council Democratic Party (NPCDP) consisting of 6 members – Recognised – Subsequently NPCDP merged with Congress Legislature Party – Taken cognizance of.

Facts of the Case

The Speaker, Shri Neiba Ndang received a joint petition from *Sarvashri* P. Enyei, MLA and Leader, W. Eyong, T.P. Manlem, Sedem Khaming, Chenlom and K. Imlong, all MLAs belonging to Nagaland Peoples' Council (NPC) claiming a split in the original party and requesting that the faction that they had constituted be recognised since it consisted of not less than one third of the sixteen members NPC Legislature Party. They also requested him to recognise the newly formed party, Nagaland Peoples' Council Democratic Party (NPCDP).

Decision of the Speaker

Taking into consideration the facts and circumstances of the case and in exercise of the power conferred upon the Speaker by the Tenth Schedule, the Speaker held on 16 March 1994 that there had been a split in the NPC Party in terms of the para 3 of the Tenth Schedule to the Constitution and accordingly accorded his approval. Further, he also recognised the newly formed political party formed by the above six members under the name and style of 'Nagaland Peoples Council Democratic Party (NPCDP)', under the leadership of Shri P. Enyei and declared that the party, NPCDP would be deemed to be the new political party for these six members for the purpose of para 3 of the Tenth Schedule to the Constitution.

Subsequent Developments

On 8 July 1994, five members of Nagaland Peoples' Council Democratic Party (NPCDP) namely, *Sarvashri* P. Enyei, W. Eyong, Sedem Khaming, Chenlom and K. Imlong claimed merger of NPCDP with Congress Legislature Party (CLP)

and requested the Speaker to recognise it.

The Speaker took cognizance of the merger and treated the members as the members of Congress (I) Legislature Party for the purpose of sub para (1) of para 2 of the Tenth Schedule and it became their original political party for the purpose of para 4 of the Tenth Schedule to the Constitution. He also allotted seats to these members along with the CLP members in the House.

Orissa

Behera Case (Orissa LA, 1989)

Petition for disqualification on ground of voluntarily giving up membership of Indian National Congress (INC) defying the whip and joining another party filed – Allowed – given opportunity to be heard in person – issue referred to Committee of the Privileges for preliminary enquiry and report – Member disqualified.

Facts of the case

On 29 March 1989, Shri Satya Bhushan Sahu, MLA and the Government Chief Whip, Indian National Congress (INC) filed a petition under the Tenth Schedule to the Constitution against Shri Bhajaman Behera, MLA for allegedly voluntarily giving up membership of his original political party *i.e.* Indian National Congress (INC) and joining the newly formed Janata Dal Party and also for defying the Whip issued to him by his party, INC during the consideration and passing of the Government Bills *viz.* the Orissa Forest Produce (Control of Trade) Amendment Bill, 1989 and the Orissa Universities Bill, 1989 on 27 March 1989.

The petition, addressed to the Secretary, Orissa Legislative Assembly, was received by him on 29 March 1989. The said petition was then placed before the Speaker on the same day who ordered that action be taken after examining the matter. In the said petition a prayer was made that Shri Bhajaman Behera, MLA be declared to have incurred disqualification for being a member of the Orissa Legislative Assembly under paragraph 2(1) of the Tenth Schedule to the Constitution on the ground of having voluntarily given up membership of his original political party and defying his party's whip. The petitioner had enclosed the following documents: (i) declaration of result of Shri Bhajaman Behera as a member of the Orissa Legislative Assembly; (ii) extract of proceedings of the Assembly wherein the Speaker had announced that Shri Behera had joined the newly constituted Janata Dal; and (iii) three line whip dated 26 March 1989 issued to all members of the INC Legislature Party by the Government Chief Whip, Shri Satya Bhushan Sahu.

Before proceeding to either determine the question or to refer the matter to the Privilege Committee, the respondent, as well as the Leader of INC were given an opportunity to offer their comments. The Leader of the INC Legislature Party accepted the allegations made in the petition. The respondent also accepted the allegation of his joining the Janata Dal but denied receipt of any whip of the Indian National Congress Legislature Party. On receipt of comments from both the parties to the case, the Speaker referred the matter to the Committee of Privileges for making a preliminary enquiry and submitting a report to him as per provisions of the law.

The issues for consideration before the Committee were: (i) whether by joining Janata Dal the respondent had incurred disqualification under paragraph 2(1) of the Tenth Schedule; (ii) whether the respondent had voted in the House on 27 March 1989 contrary to the direction issued by the Legislature Party concerned of which he was a member; and (iii) whether there was any merit in his claim that the question of maintainability of the petition should be taken cognizance of by the Committee.

The Committee of Privileges submitted their report to the Speaker on 22 August 1989 wherein the Committee held that the respondent had incurred disqualification under paragraph 2(1) (a) and (b) of the Tenth Schedule to the Constitution.

Decision of the Speaker

After taking into consideration the facts, circumstances the Report of the Committee of Privileges and the relevant provisions of the Law and the Rules, the Speaker gave another opportunity to the respondent to present his case in person before him on 7 September, 1989. During the personal hearing, Shri Behera again raised the question of maintainability of the petition. The Speaker while holding that the objection had no merit, observed that though the petition of Shri Satya Bhusan Sahu, Government Chief Whip was addressed to the Secretary, Orissa Legislative Assembly, the same was duly placed before him and he had taken cognizance of the matter.

Hence, in exercise of the powers conferred upon him under paragraph 6 of the Tenth Schedule to the Constitution of India, the Speaker Shri Prasan Kumar Dash, on 15 September 1989 held that Shri Bhajaman Behera, an elected member of the Orissa Legislative Assembly from 122-Talcher (SC) constituency had incurred disqualification in terms of paragraph 2(1) (b) of the said Schedule for being a member of the Orissa Legislative Assembly.

Accordingly, Shri Bhajaman ceased to be a member of Orissa Legislative Assembly with immediate effect.

Consequential Action

The order of the Speaker was notified *vide* Notification No. 21504/LA, dated 15 September 1989 and published in the Orissa Gazette on 27 September 1989.

Mallick Case (Orissa LA, 1992)

Petition for disqualification on ground of joining party inspite of being Independent member filed – allowed – Given opportunity to be heard in person – Issue referred to Committee of Privileges for preliminary investigation and report – Petition dismissed.

Facts of the case

On 15 February 1992, Shri Jangyeswar Baboo, MLA filed a petition under the Tenth Schedule, against Shri Rabindra Kumar Mallick, MLA for allegedly joining the Indian National Congress (INC) Party after being elected as an Independent member.

The petitioner pleaded that Shri Mallick be declared to have incurred disqualification for being a member of the Orissa Legislative Assembly as he had joined the INC by filing nomination paper for the post of Pradesh Congress Committee Member. The petition was submitted along with the documentary evidences: like (i) copy of the nomination paper filed by Shri Mallick for the post of Pradesh Congress Committee (P.C.C.) member; and (ii) membership of Niali Congress Bloc Committee.

After ascertaining that the petition was in order, the Speaker caused forwarding a copy thereof to the respondent for his comments. In his reply, the respondent stated that he had neither filed any nomination for the post of P.C.C. member nor signed any document for membership of the Bloc Congress Committee. He further alleged that his signatures had been forged and fabricated by some miscreants with the intention to tarnish his image in the eye of the public.

Thereafter, both the parties were called to appear before the Speaker for a personal hearing on 24 March 1992. During the personal hearing, the petitioner submitted a letter dated 23 January 1992 of one Shri Umakanta Nanda, a candidate for election to the post of P.C.C. member addressed to their District Returning Officer, as another documentary evidence in support of his contention.

The Speaker had then referred the matter to the Committee of Privileges for making a preliminary investigation and submitting a report to him.

The issues for consideration before the Committee were: (i) whether the petition submitted by Shri Jangyeswar Baboo was in order; and (ii) whether

Shri Rabindra Kumar Mallick had incurred disqualification under the provisions of the Tenth Schedule to the Constitution of India.

The Committee of Privileges submitted their report to the Speaker on 20 December 1994.

Decision of the Speaker

After considering the facts and circumstances of the case, the report of the Committee of Privileges on 20 December 1994 submitted to him and relevant provisions of the Law and the Rules, the Speaker, Shri Yudhisthir Das held that the petition of Shri Jangyeswar Baboo, MLA filed against Shri Rabindra Kumar Mallick, MLA was not in terms of provisions of paragraph 2(2) of the Tenth Schedule to the Constitution of India and accordingly the petition was dismissed.

Consequential Action

The Order of the Speaker was notified *vide* Notification No.23591/LA dated 20 December 1994 and published in the Gazette of 2 January 1995.

Kumar Behera Case (Orissa LA, 1994)

Petition for disqualification on ground of voluntarily giving up membership of Janata Dal filed – Allowed – Given an opportunity to be heard in person – Member disqualified.

Facts of the case

On 19 November 1994, Shri Ashok Das, MLA and the President of the Janata Dal, Orissa filed a petition under the Tenth Schedule to the Constitution against Shri Kumar Behera, MLA for allegedly voluntarily giving up membership of his original party *i.e.* the Janata Dal. In support of his contention the petitioner enclosed the letter of resignation of Shri Behera.

After ascertaining that the petition was in order, it was forwarded to Shri Behera, the respondent for his comments. He appeared before the Speaker for a personal hearing on 1 December 1994. During the hearing, he confirmed his resignation from primary membership of the Janata Dal.

The issue for consideration before the Speaker was whether Shri Behera had incurred disqualification for being a member of the Orissa Legislative Assembly.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Yudhisthir Das held on 1 December 1994 that Shri Kumar Behera, an elected member of the Orissa Legislative Assembly from 126-Bhadi (SC) Assembly Constituency had incurred disqualification in terms of paragraph 2(1) (b) of the said Schedule for being a member of Orissa Legislative Assembly. Accordingly, Shri Kumar Behera ceased to be a member of Orissa Legislative Assembly with immediate effect.

Consequential Action

The Order of the Speaker was published in Orissa Legislative Assembly Notification No.21647/LA dated 1 December, 1994 and the House was also informed of the decision. Subsequently, it was published in the Orissa Gazette on 6 December, 1994.

Punjab

Wadala and Others Case (Punjab LA, 1986)

Petition praying for disqualification on ground of violating party directions filed – notice issued – the Respondent claimed a split in Shiromani Akali Dal – Validity of the notice as well as the Law challenged in the writ petition to High Court – Court upheld the Law except para 7 and left the question of split for the Speaker to decide – Speaker held – Exception under para 3 of Tenth Schedule not attracted – Hence no split – Member disqualified in terms of para 2 of the Tenth Schedule.

Facts of the Case

On 11 June 1986, Sardar Surjit Singh Barnala, President of Shiromani Akali Dal and Leader of the Shiromani Akali Dal Legislature Party in the Punjab Vidhan Sabha filed a petition under the Tenth Schedule to the Constitution against Sardar Kuldip Singh Wadala, MLA for allegedly violating the party directions. It was contended that the respondent, Shri Wadala, was elected on Shiromani Akali Dal ticket and thereby became a member of the Shiromani Akali Dal Legislature Party. Shri Barnala, having been authorized by the Working Committee of the Shiromani Akali Dal to nominate the candidates for the Offices of the Speaker and the Deputy Speaker of the Punjab Vidhan Sabha, elections to which were scheduled to be held on 2 June 1986, had nominated Sardar Surjit Singh Minhas and Sardar Jaswant Singh for the Offices of the Speaker and the Deputy Speaker, respectively. He also issued a written direction in this respect to all the members of the Shiromani Akali Dal Legislature Party *i.e.* to vote in favour of the nominated candidates, on the day of election of the Speaker and Deputy Speaker. It was alleged that the respondent along with 21 other members of the Shiromani Akali Dal Legislature Party, defying the party directions, voted for Giani Arjan Singh Litt and Dr. Satwant Singh Mohi for the Offices of the Speaker and the Deputy Speaker, respectively, instead. As a consequence, therefore, it was held that Shri Wadala had incurred disqualification for being a member of the House in terms of provisions of para 2(1)(a) of the Tenth Schedule to the Constitution.

On receipt of the petition and having found that the petition was in order, a copy of the same was forwarded to the respondent on 13 June 1986 to show cause within seven days as to why action under the aforesaid Schedule to the Constitution be not taken against him. On this, Shri Wadala requested *vide* letter of 20 June 1986 that he might be granted permission to extend the time of filing the written reply *i.e.* by 1 July 1986. He was given an opportunity to appear for a personal hearing before the Speaker in his Chamber on 4 July 1986 and to inspect the records if so desired, before filing his reply. Though he filed a written reply on 1 July 1986, he did not appear for personal hearing on the scheduled date.

Shri Wadala instead filed a writ petition in the Punjab and Haryana High Court challenging the validity of the notice issued to him by the Speaker of the Punjab Legislative Assembly. He *inter alia* pleaded that an order passed by the earlier Speaker, Sardar Ravi Inder Singh, recognition had been granted to a split in the Legislature Party and as a result thereof a separate Group of twenty-seven members had come into existence in the Legislature. It was also contended that the incumbent Speaker, Shri Surjit Singh Minhas could not sit in judgment in the instant case because of his political alignment with Sardar Surjit Singh Barnala. He also challenged the validity of the Constitution (Fifty-second Amendment) Act, 1985 on the ground that the Act takes away the freedom of speech of a member of the House of a Legislature and is violative of the fundamental rights of the member. The petition came up for preliminary hearing before the Division Bench which referred the matter to the Full Bench of five Judges after passing the Order that the Speaker could pass an Order on the application but it should not be given effect.

The Full Bench heard the respondent and others in the matter and reserved its judgment till 1 May 1987. The majority of the Judges held that the provisions of the Constitution (Fifty-second Amendment) Act 1985 were valid except paragraph 7 of the Tenth Schedule which excluded the jurisdiction of the Courts in regard to matters relating to disqualification. The High Court found that the order of the then Speaker, Sardar Ravi Inder Singh of 8 May 1986 could not be treated an order for the purposes of paragraph 6 of the Tenth Schedule to the Constitution so as to be binding on the party or the present Speaker. The Court further held that the order otherwise was *non-est* as the petitioner, Sardar Surjit Singh Barnala and the Shiromani Akali Dal who were interested and affected parties in the case, were not heard before passing the final order. The High Court left the question as to whether there had been a split in the party or not, to be decided by the

Speaker in exercise of the powers vested in him under paragraph 6 of the Tenth Schedule to the Constitution.

Decision of the Speaker

Going by the facts and circumstances of the case, the Speaker, Shri Surjit Singh Minhas restricted his decision only to the question as to whether a split had in fact taken place in the party or not so as to attract the provisions of paragraph 3 of the Tenth Schedule and allow Shri Wadala and others to continue as members of the Punjab Legislative Assembly. All other points contained in the reply to the show cause notice were not specifically dealt with by the Speaker as the Court had already either considered or ignored the same.

While determining the question, the Speaker, Shri Minhas first examined the scope of the provisions of paragraph 3 of the Tenth Schedule dealing with the cases of split. In this connection, he observed:

"The true test, therefore, is to see whether the original political party has been split, whether as a result of the split in the original political party, a faction in the party has arisen which is represented by the group of members to which the respondent belongs. Positively speaking, therefore, the following must happen before a member can save himself from the effects of paragraph 2:

(a) that the Split should take place in the original political party;
(b) that a faction must arise as a result of the split in the original political party;
(c) that there should be a group (in the Legislature) which must represent that faction which arises as a result of the split in the original political party; and
(d) that the respondent must be a member of that group."

He further added:

"The intention of the Parliament while enacting paragraph 3 ... was to ensure that it is not the split in the Legislature Party which is determinative of the exception to the rule contained in paragraph 2 but the split in the original political party. The Legislature Party, in the scheme of the amendments, was treated only as a wing of the party having the responsibility to represent in the House of a Legislature the views, objectives, policies and programmes of the original political party."

On the question as to what does the word "split" occurring in paragraph 3 means, he observed: "the word split connotes a vertical split in the party...in the

event of split, schism must run through the entire fabric from one end to the other. Otherwise it would be considered to be a spliater group coming out of the party".

Finally, the Speaker, Shri Surjit Singh Minhas held that applying the provisions of paragraph 3 to the facts of the case, it was not possible to hold that there was any split in the political party and the mere fact that some of the members of the party sought to form a separate group in the Legislature by itself could not save them from the disqualification provided in paragraph 2 of the Tenth Schedule to the Constitution. Since, the case of the respondent did not fall within the exception envisaged by paragraph 3 of the Tenth Schedule, he had incurred disqualification under paragraph 2 of the Tenth Schedule.

Consequential Action

Accordingly, Sardar Kuldip Singh Wadala ceased to be a member of the Punjab Legislative Assembly *w.e.f.* 2 June 1986. The order was published in the Punjab Government Gazette (Extraordinary)*.

Subsequent Developments

All the members so disqualified filed writ petitions in the Punjab & Haryana High Court and thereafter, in the Supreme Court of India. To give relief to the disqualified members, the Supreme Court "ordered that" members who have been disqualified will continue to keep the residential quarters which they have been occupying. Secondly, they will also continue to keep the telephone facilities at the same rates which they were enjoying earlier. There will be no refund of any loan for car, for house, or any other loan given to them as members of the Legislative Assembly. On payment of usual installments and fulfilment of other conditions, they will also be entitled to other facilities and allowances as other members of the Assembly as if they have not been disqualified. This order will be subject to the final order of this Court. In case the disqualification is upheld, those members will be liable to refund the monetary privileges and other benefits they will be enjoying by virtue of the order. However, the petitions were dismissed by the Supreme Court for non-prosecution.

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* Similarly, Sardar Mohinder Singh Brar, Sardar Inderjit Singh Jaijee, Sardar Sukhdev Singh Dhindsa, Sardar Balwinder Singh Bhunder, Sardar Gurdev Singh Badal, Sardar Talib Singh Sandhu, Sardar Sujan Singh, Sardar Prem Singh Lalpura, Raja Narinder Singh, Sardar Parkash Singh Badal, Giani Arjan Singh Litt, Sardar Bachhittar Singh, Sardar Devinder Singh Garcha, Sardar Hardial Singh Rajla, Sardar Jasdev Singh Sandhu, Sardar Jasmel Singh, Sardar Kirpal Singh Libra, Dr. Rattan Singh, Dr. Satwant Singh Mohi, Sardar Sukhdev Singh Libra and Sardar Tara Singh, all MLAs, were disqualified from the membership of the Punjab Legislative Assembly through identical orders issued to them by the Speaker on 2 and 4 May 1987.

Sandhu Case (Punjab LA, 1987)

Petition for disqualification on ground of voluntarily giving up membership of original party: Shiromani Akali Dal filed – Show cause notice issued to member whose disqualification was sought – Member refused to accept the notice – Speaker opined that as the member did not contest allegations, the same stood established – Member disqualified in terms of para 2(1)(a) of the Tenth Schedule.

Facts of the Case

On 14 February 1987, Sardar Surjit Singh Barnala, President of Shiromani Akali Dal in a letter addressed to the Speaker, Shri Surjit Singh Minhas intimated that Sardar Harbhajan Singh Sandhu, MLA had voluntarily given up his membership of Shiromani Akali Dal, the party that had set him up as its candidate in the elections and that he had joined a new party.

On receipt of the letter, the Speaker issued a show cause notice to Shri Sandhu on the same day. As Shri Sandhu was not available at his official residence, the notice was later sent at his permanent address through a special courier. The special courier however, reported on 15 February, 1987 that Shri Sandhu refused to accept the notice. This was authenticated by the General Assistant to the Deputy Commissioner, Amritsar.

Decision of the Speaker

The Speaker, Shri Surjit Singh Minhas, gave his decision in the matter on 16 February 1987. The Speaker held that the fact that Shri Sandhu had refused to take delivery of the notice sent to him amounted to the service of the notice in the eyes of law and such refusal, made it clear that he did not want to deny the allegation that he had given up the membership of his original party *i.e.* Shiromani Akali Dal. The Speaker, therefore, ruled that Sardar Harbhajan Singh Sandhu had incurred disqualification for being a member of the Punjab Legislative Assembly in terms of para 2(1)(a) of the Tenth Schedule to the Constitution for voluntarily giving up his membership of Shiromani Akali Dal, the party that had set him up as its candidate in the elections and joining a new party.

Consequential Action

Sardar Harbhajan Singh Sandhu accordingly ceased to be a member of the Punjab Legislative Assembly. The order of the Speaker was notified in the Gazette.

Bharatiya Janata Party (Punjab) Case (Punjab LA, 1993)

Claim for split in Bharatiya Janata Party (BJP) having 6 members – Members constituting splitaway Group claimed formation of a new party. Bharatiya Janata Party (Punjab) consisting of 2 members – Meanwhile one member expelled from the original party – No provision of expulsion under the Law – Split recognised.

Facts of the case

On 16 May 1993, Shri Ramesh Datt Sharma, MLA and Dr. Harbans Lal, MLA submitted a letter, jointly signed by them, to the Speaker, Sardar Harcharn Singh Anjala claiming that a split had taken place in the Bharatiya Janata Party. According to the members, due to fundamental differences on political and ideological issues within the leadership of the Bharatiya Janata Party in relation to the State of Punjab there had been a split in the party and a new party known as Bharatiya Janata Party (Punjab) had been formed. As a result thereof, there had also been a split in the Bharatiya Janata Party Legislature Group and they had decided to constitute a separate group in the Punjab Vidhan Sabha known as 'Bhartiya Janata Party (Punjab) Legislature Group'. The members further submitted that they constituted one-third of the strength of BJP Legislature Party which was six as was required under the provisions of para 3 of the Tenth Schedule to the Constitution. In view of this, it was requested that the splitaway Group might be allotted separate seats.

On 17 May 1993, a letter dated 16 May 1993 signed by Shri Madan Mohan Mittal, President of the Bhartiya Janata Party, Punjab Pradesh and the Leader of the Bharatiya Janata Party (B.J.P.) Legislature Group was delivered in the Office of the Speaker. It was *inter alia* stated in the letter that Dr. Harbans Lal, MLA belonging to the BJP had been expelled from the primary membership of the Party for anti-party activities, as a result of which the strength of the Party in the Assembly had been reduced from six to five; and accordingly a change be carried out in the record's of the Punjab Vidhan Sabha.

On receipt of the letter, the Speaker decided to hear both Dr. Ramesh Datt Sharma and Dr. Harbans Lal, MLAs on 26 May 1993 in his Chamber. He also

decided to give an opportunity to Shri Madan Mohan Mittal, President, Bharatiya Janata Party Legislature Group in the Vidhan Sabha to offer his comments with regard to the split claimed by Dr. Ramesh Datt Sharma and Dr. Harbans Lal. Copies of the letter were also sent to Shri Mittal and Dr. Lal.

But before the Speaker could take a decision, the question as to whether the Speaker could decide the matter exercising his powers under paragraph 6 of the Tenth Schedule particularly when no Rules had been framed as per the requirement of paragraph 8 of the Tenth Schedule came up for consideration. On examination, a view was taken that in the light of established norms and precedents and also the Supreme Court's ruling that in the absence of Rules of Procedure, authorities are required to follow a procedure which is fair and just in accordance with the principles of natural justice, the Speaker is not precluded from proceeding in the matter. Accordingly, the Speaker proceeded to decide the case in conformity with the well established procedure, usages and practices.

The personal hearing took place on 27 May 1993. During the personal hearing, Dr. Ramesh Datt Sharma, MLA submitted that the letter which was delivered on 16 May 1993 in person, to the Speaker was signed by him and Dr. Harbans Lal, MLA on their own volition and was not under pressure or duress of any individual or any political party. Dr. Harbans Lal also reiterated the same. When he was asked about his expulsion from the Bharatiya Janata Party, he stated that a split in the Party had already taken place much before Shri Mittal had sent the intimation regarding his expulsion. He further stated that this so-called expulsion from the Bharatiya Janata Party had been an after thought.

Shri Madan Mohan Mittal, President, Bharatiya Janata Party, Punjab Pradesh and the Leader of the Bharatiya Janata Party Legislature Group in the Vidhan Sabha, in his reply to the Speaker *vide* his letter of 26 May 1993 stated that no split had ever taken place in the Bharatiya Janata Party either at the National or at the State level and that no meeting of the Party was convened or held as per party constitution.

From the facts of the case, the following issues arose for consideration of the Speaker:

(i) whether there was a split in the original political party of the Bharatiaya Janata Party;

(ii) whether the expulsion of Dr. Harbans Lal as intimated by Shri Madan Mohan Mittal *vide* his application of 16 May 1993 and delivered to the Speaker's Office on 17 May 1993 was valid and had any legal effect on the claim made by Dr. Datt and Dr. Lal.

Consequent upon the passing away of the Speaker, the Deputy Speaker, Shri Ramesh Chandra Dogra, who was officiating as the Speaker decided to proceed in the matter. He again gave a personal hearing to the respondents. On the scheduled date *i.e.* 21 June 1993, they appeared before him and reiterated what they had submitted earlier before the Speaker on 27 May 1993. Similarly, Shri Madan Mohan Mittal, when given an opportunity to make any additional comments, reiterating his submissions made earlier stated that the powers of the Speaker under the Tenth Schedule of the Constitution could be exercised only by the 'Speaker' and not by the 'Deputy Speaker' or 'officiating Speaker' and requested that the matter be dealt with and decided by the duly elected Speaker of the House only, as it was a quasi-judicial matter.

Decision of the officiating Speaker

Taking into consideration the facts and the circumstances of the case, the Deputy Speaker, officiating as the Speaker, Punjab Vidhan Sabha *inter alia* observed as follows:

(i) The Tenth Schedule of the Constitution is silent on the question as to how and to what extent a split should occur in the political party... The moment one-third members of a Legislature Party make a claim that they constitute a group representing a faction which has arisen as a result of the split in original political party, the split has occurred.

(ii) On the question of expulsion of Dr. Harbans Lal from the Legislature Party, the letter of Shri Madan Mohan Mittal informing about the expulsion reached later than the letter of Dr. Sharma and Dr. Lal claiming the formation of a separate group representing a faction which had arisen as a result of split in the B.J.P. The letter was in fact personally delivered by them.

(iii) In the Tenth Schedule there is no provision for expelling a member from a Legislature party. It provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. So the constitutional status of Dr. Harbans Lal inside the Legislature could not be taken away by his expulsion from the Bharatiya Janata Party. Even if the letter of Shri Madan Mohan Mittal had been received earlier to the letter of split, it could not have any effect on the constitutional and legal status of Dr. Harbans Lal as member of the Bharatiya Janata Legislature Party.

(iv) On the question whether the power of the Speaker under the Tenth Schedule to the Constitution could be exercised only by the Speaker and not by the 'Deputy Speaker' or the 'officiating Speaker', clause (1) of Article 180 of the Constitution of India clearly states that while the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or if the office of Deputy Speaker is also vacant by such member of the Assembly as the Governor may appoint for the purpose.

In view of above and all other material available on record and after hearing the parties, the Deputy Speaker, in his decision dated 5 July 1993 held that since the two members, *viz.* Dr. Ramesh Datt Sharma, MLA and Dr. Harbans Lal constituted a faction which had arisen as a result of split in the original Bharatiya Janata Party and as such group consisted of not less than one-third of the members of the legislature party, this faction, namely, Bharatiya Janata Party (Punjab) may be deemed to be a political party to which both belonged, from the time of split i.e. with effect from 16 May 1993.

United Communist Party of India Merger Case (Punjab LA, 1993)

Claim of merger of the lone member of Punjab Unit of the United Communist Party of India with the Congress(I) Party – Merger allowed – Member of the merging party treated as member of the party he merged with.

Facts of the Case

On 15 July 1993, Shri Baldev Singh Ballamgarh, MLA, belonging to the Punjab Unit of the United Communist Party of India personally handed over an application dated 15 July 1993 to the Deputy Speaker, Punjab Legislative Assembly wherein he informed that the State Unit of the Party in its meeting held on 10 April 1993 at Muktsar had passed a resolution for the merger of his party with the Congress (I) Party. It was further intimated that the Party had announced the decision of merger at a Conference held on 13 April 1993 at Talwandi Sabo which was presided over by Sardar Beant Singh, the Chief Minister and Leader of the Congress Legislature Party in the Punjab Legislative Assembly and President of the Punjab Pradesh Congress (I) Committee. He had also enclosed a copy of the resolution passed by the State Unit of the United Communist Party of India on 10 April 1993 at his Muktsar meeting. He further stated that he was the lone member of the United Communist Party of India Legislature Party in the Punjab Legislative Assembly, who by himself constituted the entire Legislature Party and pleaded that he be treated as a member of the Punjab Pradesh Congress (I) Legislature Party. He also stated that he had furnished a fresh declaration about his changed party affiliation.

Later, on the same day, the Deputy Speaker also received a communication from Sardar Beant Singh, President of Punjab Pradesh Congress (I) Committee and Leader of the Punjab Congress (I) Legislature Party in the Punjab Legislative Assembly forwarding the Party's acceptance of the merger and requesting that Shri Baldev Singh Ballamgarh be treated as a member of the Congress (I) Legislature Party and allotted a seat along with the members of the Party in the House.

Decision of the Deputy Speaker

After taking into consideration the facts and circumstances of the case, the Deputy Speaker, Shri Romesh Chander Dogra, performing the duties of the office of the Speaker under article 180(1) of the Constitution, on 16 July 1993 decided that a merger had taken place and that Shri Singh being the lone member of the Legislature Party of the United Communist Party of India in the Punjab Legislative Assembly became a member of the Indian National Congress (I) Party with immediate effect and it should be his original party for the purpose of the Tenth Schedule to the Constitution.

Indian People's Front Merger Case (Punjab LA, 1994)

Claim of merger of a lone member of Indian People's Front with Congress (I) Legislature Party – Merger allowed – Member treated as belonging to the party he merged with.

Facts of the Case

On 26 August 1994, Comrade Surjan Singh Joga, MLA belonging to the Indian People's Front submitted an application claiming that the Punjab Unit of the Indian People's Front at its conference held at Mansa on 13 January 1994 passed a resolution for the merger of the State Unit of the Indian People's Front with the Congress (I) Party and that Sardar Beant Singh, President of Punjab Pradesh Congress (I) Committee had welcomed the decision at Muktsar Conference on 14 January 1994. He enclosed a copy of the resolution. He further stated that he being the lone member of the party in the Legislature be treated as a member of the Punjab Pradesh Congress (I) Party. He also furnished a fresh declaration as in Form III about his changed party affiliation.

Subsequently on 30 August 1994, Sardar Beant Singh, President of the Punjab Pradesh Congress (I) Committee communicated to the Speaker his party's acceptance of the merger of the State unit of the Indian People's Front with the Congress (I) Party and made a request that Shri Joga be treated as a member of the Congress (I) Party and allotted a seat along with members of the Congress (I) Legislature Party in the House.

Decision of the Speaker

Taking into consideration the facts and circumstances of the case, the provisions of the Tenth Schedule and after personally hearing Shri Surjan Singh Joga, MLA on 30 August 1994, the Speaker, Punjab Vidhan Sabha, Shri Harnam Das Johar *vide* his decision dated 1 September 1994 held that since Shri Surjan Singh Joga, the lone member of the Indian People's Front in the Punjab Legislative Assembly had merged with the Congress (I) Party and INC should be deemed to be his political party to which he belonged for the purposes of sub-paragraph (1) of paragraph 2 of the Tenth Schedule to the Constitution and to be his original party for the purposes of paragraph 4 of the said Schedule.

Communist Party of India, Assembly Group Punjab Merger Case (Punjab LA, 2002)

Claim of merger of members of Communist Party of India (CPI) Assembly Group with Punjab Pradesh Congress Party – Merger allowed – Members of the merging Party treated as members of the party they merged with.

Facts of the Case

On 9 October 2002, Sardar Gurjant Singh, Leader of the Legislature Group of the Communist Party of India (CPI) and Comrade Nathu Ram, MLA, a member of the same Group submitted an application forwarding therewith a resolution to the effect that the CPI in their general meeting held at Chandigarh on 2 October 2002 had unanimously resolved to merge with the Punjab Pradesh Congress. They also stated that they being the only two members constituting the entire Legislature Group be treated as members of the Punjab Pradesh Congress Legislature Party and allotted seats accordingly in the Legislative Assembly.

On the same day, Sardar Amarinder Singh, Leader of the Punjab Pradesh Congress Legislature Party communicated to the Speaker his party's acceptance of the merger of the Legislature Group of CPI with the Punjab Pradesh Congress and requested that Sardar Gurjant Singh and Comrade Nathu Ram be treated as members of the Punjab Pradesh Congress Legislature Party and that they might also be allotted seats alongwith the members of the Party in the House.

Decision of the Speaker

Taking into consideration the facts and circumstances of the case and after examining thoroughly both the representations and the conditions required for the merger as stipulated in sub-paragraph (2) of the paragraph 4 of the Tenth Schedule to the Constitution, the Speaker, Punjab Legislative Assembly, Dr. Kewal Krishan on 10 October, 2002 held that since Sardar Gurjant Singh and Comrade Nathu Ram, the only two members of the Legislature Group of the CPI in the Punjab Legislative Assembly had merged with the Punjab Pradesh Congress Legislature Party, they had become members of that Party. The Speaker further held that the

Indian National Congress Party should be deemed to be their political party to which they belonged for the purposes of sub-paragraph (1) of paragraph 2 of the Tenth Schedule to the Constitution and to be their original party for the purpose of paragraph 4 of the said Schedule.

Consequential Action

The order of the Speaker was circulated by the Secretariat to all members of the Punjab Legislative Assembly, the Secretary, the Election Commission of India and the others concerned.

Rajasthan

Brijraj Singh and Others Case (Rajasthan LA, 1994)

Petition for disqualification filed for allegedly defying party whip issued by Janata Dal – Respondent submitted: petition did not comply with Assembly Rules, 1989; no whip was issued; consequent upon a duly recognised split in the original party, a splitaway Group had emerged – Speaker held: petitioners failed to prove claims made in the petition; respondent's action was constitutionally valid – Petition disallowed.

Facts of the Case

On 17 March 1994, Shri Fateh Singh, MLA and the Leader of the Janata Dal, filed a petition before the Speaker under para 2(1)(b) of the Tenth Schedule to the Constitution read with the Members of Rajasthan Legislative Assembly (Disqualification on ground of Defection) Rules, 1989, (hereinafter referred to Assembly Anti-Defection Rules) praying for disqualification of the respondents, *Sarvashri* Brijraj Singh, Nasaru Khan and Punjalal, MLAs, for having defied the whip issued by the Janata Dal Legislature Party to which they originally belonged.

It was averred in the petition that the members of the Janata Dal Legislature Party had elected Shri Fateh Singh as the President and Shri Punjalal as the Whip in a meeting on 3 December 1993. Later, Shri Punjalal issued a whip to the newly elected members belonging to his party to vote against the Confidence Motion moved by the Bhairon Singh Shekhawat Government in the Assembly. Shri Brijraj Singh and Shri Nasaru Khan, however, defied the whip and voted in favour of the Motion. Later, to avoid disqualification, these two members along with Shri Punjalal voluntarily gave up their membership of the Janata Dal and formed a new Party, the Bharatiya Janata Dal. The petitioner contended that by defying the whip, the respondent had incurred disqualification under the provisions of the Anti-defection law and, therefore, they were liable to be disqualified from the membership of the House.

Having found that the facts in the petition were in order, a notice was issued to the respondents directing them to submit their comments.

Meanwhile, Shri Shanti Kumar Dhariwal, MLA belonging to the Indian National Congress Party, also gave a petition for disqualification on 23 March 1994 against the respondents, *Sarvashri* Brijraj Singh, Nasaru Khan and Punjalal stating that after the General Elections to the Tenth Assembly, various secular parties at the national level including Janata Dal had decided to support the Indian National Congress to prevent the BJP from coming into power. Out of the six members of the Janata Dal Legislature Party in the House, the two members, *viz* Shri Brijraj Singh and Shri Nasaru Khan, by voting in favour of the Confidence Motion violated the whip issued by their Legislature Party and thereby they came under rigours of para 2(1)(b) of the Tenth Schedule. Thereafter, the National President of Janata Dal expelled both of them from the Party on 10 December 1993. Thus, after 10 December 1993, the strength of the Janata Dal Legislature Group was reduced to four. Hence, it was held that the act of formation of a new Group on 1 December 1993 by the name of the Bharatiya Janata Dal and subsequent submission of a letter to the Speaker on 22 January 1994 by Shri Punjalal, MLA in this connection amounted to their also having voluntarily given up the membership. Hence a prayer was made seeking disqualification of the respondents under the Tenth Schedule to the Constitution. Comments of the respondents were sought on this petition also.

The respondents *vide* their comments dated 2 September 1994 stated that the petition needed to be summarily dismissed for non-compliance with provisions of Rule 3 of the Assembly Anti-Defection Rules. Secondly, no meeting of the Janata Dal Legislature Party was held on 3 December 1993 as contented. The respondents also denied that on 30 December 1993, Shri Punjalal as Whip of the Janata Dal Legislature Party had issued a whip to them to vote against the Confidence Motion. Besides, the Bharatiya Janata Dal was formed on 1 December 1993 by the respondents to carry on their anti-Congress campaign upon which they had contested election. They denied receipt of any instruction from their Legislature Party to oppose the Confidence Motion moved by the Shekhawat Government. They also denied the allegation that Shri Brijraj Singh and Shri Nasaru Khan had been expelled by the National President of the Janata Dal on 10 December 1993 or that they had voluntarily given up the membership of the Janata Dal Party. Under such circumstances, the respondents contended that the averments made by the petitioner in his petition lacked factual basis. Hence, the petitions were liable to be dismissed.

As both the petitions contained same facts, they were considered together by the Speaker.

Decision of the Speaker

After considering the facts and circumstances of the case and the material on record, the Speaker, Shri Samrath Lal Meena, gave his decision dated 24 October 1998 under the Tenth Schedule to the Constitution in the matter.

The Speaker in his decision observed that during the course of hearings in the matter the respondents did not admit the fact that a meeting of the Janata Dal Legislature Party was held on 3 December 1993 or that the petitioner, Shri Fateh Singh, was elected the Leader of the Legislature Party or that the respondent, Shri Punjalal, was elected Whip of that political Party. They also denied that Shri Pujalal had issued a whip on 30 December 1993. In view of the these arguments, the Speaker held, it was the responsibility of the petitioner to authenticate his original statements and documents contained in the petition. But, even the original documents were not produced for the Speaker's perusal and the documents were not certified by an affidavit by the petitioner. In such a situation, the Speaker came to the conclusion that *prima facie* the contents and annexures were not to be deemed to be authentic from any angle. Besides, there were contradictions regarding the dates of the meeting in the documents and on the basis of uncertified documents, it was difficult to prove that a meeting of the Janata Dal Legislature Party was held on 3 December 1993. The copy of the whip along with his petition was also not authenticated. Moreover, the respondent, Shri Punjalal, who was said to have issued this whip, did not accept this document and made a counter statement that such a whip had never been issued.

As regards the contention of Shri Shanti Kumar Dhariwal that the respondents by voluntarily giving up their membership of the Janata Dal had incurred disqualification under the Anti-Defection Law, the Speaker held that the conduct of the respondents did not come under the provisions stipulating disqualification in the Tenth Schedule to the Constitution of India since half of the Janata Dal Legislature Party members constituted the new Group, *i.e.* the Bharatiya Janata Dal. The Speaker also opined that both the petitioners, Shri Fateh Singh and Shri Shanti Kumar Dhariwal did nothing to prove the points raised by them in their petition ard did not assist in coming to a logical conclusion. Shri Dhariwal had submitted some newspaper clippings in support of his petition without any formal proof which could not be considered as a conclusive evidence. Under these circumstances, the action of respondents in forming a new group could be termed as valid split as stipulated in para 3 of the Tenth Schedule to the Constitution of India, and therefore, they could not be declared disqualified from the membership

of the House on the ground of para 2(1)(b) of the Tenth Schedule to the Constitution. The Speaker in his decision held as follows:

> "Consequent upon the aforesaid investigation, I have come to the conclusion that the statements of the petitioner, Shri Fateh Singh, against the respondents with regard to the violation of whip... the statements of Shri Shanti Kumar Dhariwal, of having voluntarily given up the membership of the Janata Dal have not been proved. The actions of the respondents fall under the category of split as per para 3 of the Tenth Schedule. Therefore, none of the respondents can be declared as disqualified on the ground of defection. The petitions filed by Shri Fateh Singh and Shri Shanti Kumar Dhariwal are hereby dismissed."

Consequential Action

The Speaker's order was notified in the Gazette of the Government of Rajasthan and Bulletin Part II of the Rajasthan Legislative Assembly.

Sukhlal Saincha Case (Rajasthan LA, 1996)

Petition for disqualification filed for having voluntarily given up membership of Indian National Congress – Respondent allegedly filed papers for Lok Sabha Election as a candidate of another party – Speaker held: newspaper clippings are not proof as per law: nomination paper did not contain name of the party; respondent did not sign paper – Petition dismissed.

Facts of the Case

During the Tenth Legislative Assembly, Shri Rajendra Gehlot, MLA, gave a petition under para 6(1) of the Tenth Schedule to the Constitution of India and Rule 6(1) of the Members of Rajasthan Legislative Assembly (Disqualification on ground of Defection) Rules, 1989 (hereinafter referred to as Assembly Anti-Defection Rules, 1989) against the respondent, Shri Sukhlal Saincha, MLA for having voluntarily given up his membership of his original political party, *i.e.* the Indian National Congress.

It was *inter alia* averred in the petition that on 3 April 1996, Shri Sukhlal Saincha had sent his resignation from the Indian National Congress to the Speaker through a telegram and later confirmed the same by sending a letter. Both these documents were attached as exhibit No.1 and 2 with the petition. It was further submitted in the petition that the respondent filed his nomination paper as a candidate of All India Indira Congress (Tiwari) or AIIC(T) from the Pali Lok Sabha constituency and contested the election on AIIC(T) ticket. A conclusion was, therefore, drawn from the facts that the respondent had, by voluntarily giving up his membership of Indian National Congress, incurred disqualification under para 2(1)(a) of the Tenth Schedule to the Constitution of India.

Having found that the petition was in order, the Speaker caused issuance of a notice to the respondent for submission of his comments.

On 8 October 1996, the respondent furnished his comments with a request to disallow the petition on the ground that Rules 6 and 7 of the Assembly Anti-Defection Rules, 1989 had not been followed and that the petition had been filed on account of political grudge without any basis. It was further stated in the

comments that he had not given up the membership of the Indian National Congress and that the telegram and letter sent to the Speaker on 3 April 1996 were forged. Admitting that he had filed his nomination from Pali Lok Sabha Constituency for the Eleventh Lok Sabha, he did not admit having filed his nomination papers as the candidate of the AIIC(T). Stating that the petition submitted by the petitioner was politically motivated, he requested that the same be summarily dismissed and he be paid compensation.

In the light of the facts stated in the petition and the comments of the respondent the Speaker had to decide whether the respondent voluntarily gave up his membership of the Indian National Congress?

Decision of the Speaker

After considering the facts and circumstance of the case, the Speaker, Shri Samrath Lal Meena, gave his decision dated 17 October 1998 under the Tenth Schedule to the constitution in the matter. In his decision the Speaker arrived at the following conclusion:

(i) Insofar as direct evidence regarding the main plea in the petition was concerned, the petitioner had submitted exhibit-1 – a telegram and exhibit-2 – a letter. The exhibits were, however, not authenticated in the manner prescribed in the law. Besides, the respondent had provided *vide* his reply, details of circumstances under which his signatures had been obtained on these exhibits. So, the evidential value of the exhibits was found to be under suspicion by the Speaker. Shri Parasram Maderna, Leader of the Indian National Congress Legislature Party also confirmed that the respondent had not voluntarily given up his membership of his original political party.

(ii) So far as the question of contesting election from the Pali Constituency was concerned, exhibit 3 and 4, nomination paper and draft affidavit filed by the respondent, had been submitted by the petitioner. Exhibit 5 and 6 were the clippings of newspapers. Keeping in view the well-established legal position, the same were not treated as proof. A scrutiny of exhibit 3, nomination paper and exhibit 4, draft of affidavit, showed that the respondent had filed nomination paper for contesting Lok Sabha election but the column therein where the candidate had to declare the name of the Party which fielded him in the election, had been left vacant. Therefore, on the basis of exhibit, it could not be held that the respondent had filed nomination paper to contest election on the ticket

of the AIIC(T). In Exhibit 7, which is information to be furnished in format A and B, he had been shown as a candidate of the AIIC(T) but the same did not bear the signature of the respondent anywhere. Besides, it was not proved by Shri Shivcharan Mathur, the Office bearer of the AIICT(C), who had issued it. Under these circumstances, it was not established that the respondent had voluntarily given up his membership of the Indian National Congress.

The Speaker, therefore, held as under:

As a result of the above investigation, I have come to the conclusion that the petitioner, Shri Rajendra Gehlot, has failed to prove in his petition that the defendant, Shri Sukhlal Saincha, has resigned from the membership of his original political party, the Indian National Congress voluntarily. Therefore, the petition submitted by him is hereby dismissed.

Consequential Action

The Speaker's decision was notified in Assembly Bulletin Part II and in the Official Gazette of the Government of Rajasthan.

Dalichand Case (Rajasthan LA, 1998)

Voluntarily giving up membership of Janata Dal – Petition for disqualification filed – Respondent allegedly incurred disqualification by accepting membership of Bharatiya Janata Party – Speaker held: as strength of the original party was only 3, respondent's act was covered under para 3 of Tenth Schedule; Leader of legislature party did not comply with Assembly Rules – Petition disallowed.

Facts of the Case

During the Tenth Legislative Assembly, Shri Fateh Singh, MLA, gave a petition under the Tenth Schedule to the Constitution of India against Shri Dalichand, MLA, for having voluntarily given up his membership of the Janata Dal and joining the Bharatiya Janata Party or the B.J.P.

It was averred in the petition that in the Tenth Legislative Assembly a total of six MLAs had been elected on the ticket of the Janata Dal. Three of them, *Sarvashri* Brijraj Singh, Nasaru Khan and Punjalal, voluntarily gave up their membership and formed the Bharatiya Janata Dal. The petitioner *vide* a separate petition filed under the Tenth Schedule prayed for disqualification of these three members. Later, another member, Shri Dalichand, resigned from the Janata Dal Party and joined the BJP. It was submitted that the information forwarded by the respondent to the Speaker regarding accepting of the membership of the BJP on 4 April 1996 was contrary to facts. The act of the respondent, the petitioner contended, came under the purview of para 2(1)(a) of the Tenth Schedule to the Constitution of India and on that ground, he deserved to be disqualified.

The respondent, in his comments dated 2 November 1996, challenged the allegations made by the petitioner and submitted that he was one of the total six members of the Janata Dal who were elected in the General Elections held for the Tenth Legislative Assembly of Rajasthan in 1993. Soon after the elections, the Janata Dal Legislature Party started disintegrating and out of the six elected members, three members, *Sarvashri* Brijraj Singh, Nasaru Khan and Punjalal, defected from the said Party and formed the separate Group, the Bharatiya Janata Dal. Thereafter,

one more member, Shri Ajay Singh, also left the Janata Dal to join the Samajwadi Janata Dal. Consequently, as on 4 April 1996, the Janata Dal Legislature Party had only two members in the Assembly. The respondent also, keeping in view the public sentiments of his constituency, decided to give up his membership of the Janata Dal and accepted the membership of the BJP on 4 April 1996. He contended that as this act came under the category of split in the Party, it did not attract provisions of disqualifications. The petition, therefore, was liable dismissed.

Keeping in view the statements in the petition and the contents of the reply, the Speaker had to decide:

(i) whether Shri Dalichand's case came under the purview of disqualification under para 2(1) (a) of the Tenth Schedule to the Constitution?

Decision of the Speaker

After taking into a account the facts and circumstances of the case and material on record, the Speaker, Shri Samrath Lal Meena, gave his decision dated 17 October 1998 under the Tenth Schedule in the Matter. The Speaker noted that the petitioner who was also the Leader of the Janata Dal Legislature Party, had failed to comply with the provisions in Rule 3 of the Assembly Rules, 1989 which requires furnishing of particulars of names and other details of members of the Legislature Party in Form I.On verification of the records of the Legislative Assembly, it was found that the petitioner had not furnished any such information as required under the Rules. Despite being requested by the Vidhan Sabha Secretariat to furnish the requisite information, he did not do so. Under these circumstances the credibility of the contention made by the petitioner in the petition was under question. The allegations made in the petition confirmed that prior to quitting the Party and accepting the membership of the Bharatiya Janata Party by the respondent on 4 April 1996, three out of six members of the Janata Dal Legislature Party had left that Party and formed a separate Party, the Bharatiya Janata Dal. After the split, the number of Janata Dal Legislature Party members in the Rajasthan Vidhan Sabha was reduced to three. As defection of one member out of three came to one-third of the Legislature Party, it did not attract the provisions of para 2(1) of the Tenth Schedule. Announcing his decision, the Speaker held as under:

> As a result of examination of aforesaid allegations and factual positions I have come to the conclusion that the petition filed by the Hon'ble member, Shri Fateh Singh, against the Hon'ble member, Shri Dalichand,

is liable to be dismissed. I, therefore, order that the petition is hereby dismissed.

Consequential Action

The Speaker's order was notified in the Gazette of the Government of Rajasthan and published in Bulletin Part II of the Rajasthan Legislative Assembly.

Ganga Ram Chaudhary and Others Case (Rajasthan LA, 1998)

Petition for disqualification filed against 8 Independent members for having joined the Bharatiya Janata Party – Respondents were elected as Independent members; later, accepted ministerial position – Speaker held: no constitutional restriction on Independent members joining Government; news-clippings not legally accepted proof; attendance of party meetings by Independent members does not lead to disqualification – Petition dismissed.

Facts of the Case

During the Tenth Rajasthan Legislative Assembly, Shri Jagdeep Dhankhad, MLA, filed a petition under Rule 6(1) of the Tenth Schedule to the Constitution of India read with the Members of the Rajasthan Legislative Assembly (Disqualification on ground of Defection) Rules, 1989 (hereinafter referred to as the Assembly Anti-Defection Rules, 1989) against *Sarvashri* Ganga Ram Chaudhary, Sujan Singh Yadav, Rohitashwa, Gyan Singh, Gurjant Singh, Mangal Singh, Smt. Narendra Kanwar and Smt. Shashi Datta, elected to the Assembly as Independent members, praying for their disqualification in terms of para 2(2) of the Tenth Schedule to the Constitution for having joined a political party, namely the Bharatiya Janata Party or the BJP.

It was averred in the petition that the respondents were elected as Independent candidates in the elections held for the Tenth Assembly. But, they got themselves photographed alongwith the elected members of the BJP on 1 December 1993. Subsequently, on 11 December 1993, the Governor of Rajasthan administered oath of Office to the respondents as the members of the Council of Ministers alongwith the B.J.P. members. After having won the election as Independent candidates, the respondents had thus fully associated themselves with the B.J.P. They also accepted ministerial positions in the B.J.P. Government which confirmed the fact that they had become members of the B.J.P. and therefore, had come under the rigours of disqualification provisions under para 2(2) of the Tenth Schedule to the Constitution of India. The petitioner produced copies of news clippings to corroborate facts in the petition.

Having found that the petition was in order, the Speaker caused issuance of notices to the respondents directing them to file their comments.

The respondents filed their comments separately on 15 July 1995. Since their comments were identical, the contents thereof were taken up together. The respondents accepted the fact that they were elected to the Tenth Legislative Assembly of Rajasthan as Independent candidates and were nominated as member of the Council of Ministers led by Shri Bhairon Singh Shekhawat. They, however, claimed that the facts given by the petitioner on the basis of news-reports were false. Firstly, they neither associated themselves politically with B.J.P. nor took part in its political activities. Secondly, since the said news-reports were baseless, they did not find it necessary to refute the same. Thirdly, inclusion of any MLA or elected Independent member in the Council of Ministers by the Chief Minister did not mean that he had taken up membership of that particular political party and by simply taking oath as Minister, they did not stand disqualified under the Tenth Schedule to the Constitution. Thus, the petition deserved to be summarily dismissed.

Considering the contents of the petition and comments filed by the respondents, following issues emerged for the consideration of the Speaker:

(i) Whether respondents' conduct showed that they had voluntarily associated themselves with the B.J.P. political party?

(ii) Whether the respondents furnished the certificate with regard to their status as Independent candidates to the Vidhan Sabha Secretariat under the provisions of the Members of Rajasthan Legislative Assembly (Disqualification on the ground of Defection) Rules, 1989 before their joining the B.J.P. Government as ministers and taking part in that party's activities;

(iii) And whether inclusion of the respondents in the Council of Ministers might be treated as their association with the B.J.P.; and also, whether their conduct, since their election, manifested their association with the B.J.P.?

Decision of the Speaker

After taking into account the facts and circumstance of the case and material on record, the Speaker, Shri Samrath Lal Meena, gave his decisions dated 24 October 1998 under the Tenth Schedule in the matter. The Speaker in his decision opined as under: (i) the petitioner did not produce any evidence to prove the allegation that the respondents had been photographed with the B.J.P. MLAs. The petitioner also did not submit an affidavit to verify news-items produced as facts in the petition;

(ii) the rule of law regarding clippings of newspapers is that such matter does not constitute a legal proof; (iii) if a member of Council of Ministers is invited as special invitee in the meeting of any political party, it should not be construed that he has taken the membership of that concerned party. The Speaker further observed that the petitioner had failed to furnish any evidence regarding the presence of and role played by respondents in those meetings. Therefore, one could not come to a conclusion that the Independent members had associated themselves with the B.J.P. (iv) Regarding acceptance of ministerial berths by the respondents, the Speaker held that it is not mentioned anywhere in the Constitution that the Council of Ministers will be constituted or formed on the basis of political party or ideology. It is a well known fact that the era of coalition government has begun in Indian politics and most of the State Governments function on the basis of coalition and the Council of Ministers consists of members from the main political party and other political parties in the coalition. The Independent members also support them and are collectively responsible to the Legislative Assembly. So, taking oath by any Independent member as a member of the Council of Ministers headed by a member of any political party and to discharge duties in the Council of Ministers after being allotted the ministry/ department, did not lead to the conclusion that the Independent member had associated himself with that political party, the Speaker Observed.

On the basis of the above findings, the Speaker in his decision held that:

> the petitioner Shri Jagdeep Dhankhad has failed to prove that the respondents, Shri Ganga Ram Choudhary, Shri Sujan Singh Yadav, Shri Rohitashva, Smt. Narendra Kanwar, Shri Gyan Singh, Smt. Shashi Datta, Shri Gurjant Singh and Shri Mangal Singh have joined the Bharatiya Janata Party after being elected an Independent members. The petitioner has not been able to prove that the respondents have become subject to disqualification under para 2(2) of the Tenth Schedule to the Constitution of India. Hence, this petition is rejected.

Consequential Action

The Speaker's Order was notified in the Assembly Bulletin Part II and the official Gazette of the State of Rajasthan.

Sikkim

Sikkim Sangram Parishad Split Case (Sikkim LA, 1994)

Claim made for a split in Sikkim Sangram Parishad consisting of 31 members and formation of a new Party consisting of 15 members by the name of Sikkim Sangram Parishad (S) – Recognised – Petition for disqualification for voluntarily giving up membership of original party: Sikkim Sangram Parishad filed – Respondents given opportunity to be heard in person – They pleaded split in the Party – Petition dismissed.

Facts of the Case

On 15 May 1994, 15 members belonging to Sikkim Sangram Parishad, *viz.* *Sarvashri* Chamla Tshering, O.T. Bhutia, Sonam Dupden, Sonam Choda Lepcha, S.G. Keleon, Tasa Tangay, Namkha Gyaltshen, Phuchung Bhutia, Hangu Tshering, Chewang Lhamu, Ugen Tshering Pintso, Rup Raj Rai, M.B. Dahal, B. Ramudamu and Sanchama Limboo, informed the Speaker, Shri Dorjee Tshering Bhutia that a split had taken place in their original party. It was stated that the said 15 members who constituted more than one-third of the total strength of the Legislature Party of the Sikkim Sangram Parishad had unanimously decided to split from the party and form the Sikkim Sangram Parishad (S) Party.

The Speaker took cognizance of the split and formation of the Sikkim Sangram Parishad (S) and information in this regard was published in Bulletin Part II of 21 May 1994.

On 3 June 1994, Shri Nar Bahadur Bhandari, MLA filed a petition under the provision of paragraph 2 (1) (a) of the Tenth Schedule to the Constitution against all the fifteen members mentioned above for voluntarily giving up membership of their party i.e., Sikkim Sangram Parishad.

The main contention of the petitioner was that there was no split in the political party, Sikkim Sangram Parishad, of which the petitioner was the Leader. It was also contended that for the purpose of the split, one-third of the total number of members of the political party should be considered and the faction led by Shri Sanchaman Limboo was not one-third of that political party; as such they were

not entitled to the protection under paragraph 3 (a) of the Tenth Schedule.

After ascertaining that the petition was in order, the Speaker issued notice both to the petitioner and the respondents on 15 July 1994 for personal hearing fixed by him on 19 July 1994. On the appointed day, the petitioner did not turn up. Instead, he was represented by Shri K.N. Upreti, Ex. MLA.

On this, the Speaker observed:

> I do not think that a member filing a petition under the Tenth Schedule can be represented by any other person in the hearing fixed by the Speaker. However, I do not think that it is necessary to decide this point in the present case as it can be decided in some other appropriate petition in future.

The Speaker, therefore, allowed the Ex. MLA to represent the petitioner.

From among the 15 respondents, eight members were present. The Speaker heard Shri Upreti and the respondents. Shri Upreti confined his submissions to the statement made in the petition filed by Shri Nar Bahadur Bhandari. He produced no evidence and filed no documents.

During the course of the deliberation, it was mentioned that some members of the Legislature Party formed a group under the leadership of Shri Sanchaman Limboo; and Shri Limboo and other members of the Group informed the Speaker *vide* a letter signed by 15 such members on 15 May 1994 that a split had taken place in the Sikkim Sangram Parishad Party. It was stated that the members who constituted more than one-third of the original strength of the legislature party of the Sikkim Sangram Parishad had unanimously decided to split from the Sikkim Sangram Parishad and formed the Sikkim Sangram Parishad (S) Party. It was also contended that Sikkim Sangram Parishad (S) was recognised as a party consisting of 13 members, *vide* Bulletin Part II of 21 May 1994.

Earlier, on 17 May 1994, Shri Nar Bahadur Bhandari, the petitioner addressed a letter to the Speaker asking him for allotment of one hour each in the Assembly to the three parties, namely, Sikkim Sangram Parishad, Sikkim Sangram Parishad (S) and Sikkim Democratic Front for discussion on the Motion of Confidence to be moved by him in the House on that day thereby tacitly accepting the existence of Sikkim Sangram Praishad(S).

On 18 May 1994, the petitioner addressed a communication to the Secretary, Sikkim Legislative Assembly wherein he stated that having lost the Motion of Confidence by two votes in the Sikkim Legislative Assembly on 17 May 1994, he now had the support of 13 MLAs of the Sikkim Sangram Parishad Party. This Group of MLAs constituted the Opposition which would be headed by him in the

Legislative Assembly. This Group, therefore, might be recognised as Opposition Group and he be treated as the leader of the Opposition in the Legislative Assembly. The Speaker accorded recognition to the Sikkim Sangram Parishad under the leadership of Shri Nar Bahadur Bhandari as the Opposition Party in the Sikkim Legislative Assembly.

The issue for consideration before the Speaker was the numerical strength of the break away group in relation to the total number of members in the original Legislature party and whether they were entitled to the protection under paragraph 3 (a) of the Tenth Schedule.

Decision of the Speaker

Taking into consideration all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule, the Speaker, Shri Dorjee Tshering Bhutia pronounced his decision in the matter on 22 July 1994, as follows:

> I have considered the points raised on behalf of the petitioner and find that there is no merit in the petition. That the split in the Legislature Party took place is a matter of record.
>
> I, therefore, hold that the respondents herein constitute the group representing a faction, which has arisen as a result of a split in their original political party and that such group consists of not less than one third of the members of the Legislature party. . ."
>
> The petition filed by Shri Nar Bahadur Bhandari praying for disqualification of the 15 respondents herein is hereby dismissed.

Dilliram Basnet and Birbal Subba Case (Sikkim LA, 1994)

Petition for disqualification for voluntarily giving up membership of Sikkim Sangram Parishad Party having 31 members against 2 members filed – Allowed – Given opportunity to be heard in person – In the meanwhile one member resigned – Petition against him became infructuous – Other member treated as member of the split away Group – Petition dismissed.

Facts of the Case

On 3 June 1994, Shri Nar Bahadur Bhandari, MLA filed a petition before the Speaker, Shri Dorjee Tshering Bhutia against Shri Dilliram Basnet, MLA and Shri Birbal Subba, MLA and Minister of Agriculture under the provision of paragraph 2(1)(a) of the Tenth Schedule to the Constitution for voluntarily giving up membership of their original party *i.e.*, Sikkim Sangram Parishad (SSP) consisting of 31 members.

After completing the procedure as laid down under the Rules, the Speaker summoned the petitioner and the respondents for personal hearing on 19 July 1994. Shri Upreti, Ex. MLA, was authorised by the petitioner to appear on his behalf. The respondent, Shri Birbal Subba appeared before the Speaker personally. The other respondent, Shri Dilliram Basnet did not appear as he had since resigned from the membership of Sikkim Legislative Assembly on 18 June 1994. During the hearing, Shri Upreti reiterated what Shri Bhandari had submitted in the petition. However, his submissions were not substantiated by any evidence or document.

In his submission, the respondent, Shri Subba stated that he was one of the group of 16 members who had split away from the Sikkim Sangram Parishad under the leadership of Shri Sanchaman Limboo. He was, however, prevented from joining the Group as he was forcibly detained at the residence of the petitioner, Shri Bhandari. This allegation was not controverted by Shri Upreti representing the petitioner.

Since Shri Basnet had resigned from the membership, it was decided that the petition against him had become infructuous. The issue for determination before the Speaker was whether the respondent had voluntarily given up the membership of his original party.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the Law and the Rules, the Speaker observed:

> I accept the version given by Shri Birbal Subba and, therefore, hold that he was, right from the beginning, a part of the Group representing the faction which arose as a result of the split in the party and since the Group consisted of 16 (sixteen) persons that is not less than one-third of the members of the Legislature Party, this case falls under para 3 (a) of the Tenth Schedule and he has, therefore, not incurred any disqualification... The petition filed by Shri Nar Bahadur Bhandari is hereby dismissed.

Ram Lepcha and Others Case (Sikkim LA, 1995)

Petition for disqualification filed against 6 members for voluntarily giving up membership of original political party: Sikkim Sangram Parishad (SSP) having a strength of 10 members in the House Sangram Parishad – Given an opportunity to be heard in person – Established that the members belonged to a recognised Group called SSP (R) hence the provision under the Tenth Schedule not attracted – Meanwhile petitioner did not want to pursue the petition – Petition dismissed as not pressed.

Facts of the Case

On 21 March 1995, Shri K.N. Upreti, MLA filed a petition before the Speaker, Shri C.B. Subba under the provision of paragraph 2(1) (a) of the Tenth Schedule to the Constitution against *Sarvashri* Ram Lepcha, Melom Lepcha, Tseten Tashi Bhutia, D.J. Lepcha, Thutop Bhutia and Smt. R. Ongmu, all MLAs. The petitioner prayed for their disqualification from the membership of the House for voluntarily giving up membership of Sikkim Sangram Parishad (SSP) on whose ticket they were elected to the House.

On receipt of the petition, and after ascertaining that it was in order, the Speaker issued notices to all the respondents and also to Shri Nar Bahadur Bhandari, being the President of SSP.

In reply, the respondents reiterated what they had earlier stated to the Speaker *vide* a letter dated 26 February 1995 mentioning that they formed a separate Group after a split from SSP *w.e.f.* 25 February 1995 and that this Group be recognised as a split-away Group named SSP(R) and that they might be allotted separate seats in the House.

The petition was listed for hearing on 21 September 1996 and notices were issued on 16 September 1996 to Shri K.N. Upreti, the petitioner, all the six respondents belonging to SSP(R) and Shri N.B. Bhandari, President, SSP. Everybody except Shri N.B. Bhandari was present before the Speaker in pursuance of the notice for hearing.

However, before the Speaker could give his decision, Shri K.N. Upreti, the petitioner, informed the Speaker on 13 September 1996 in writing that he was

not interested in pursuing his petition. He mentioned that after he had filed the petition, a sea change had come in the SSP. He further pleaded that he had been expelled as a member and General Secretary of the Party. Shri N.B. Bhandari sent a letter dated 18 September 1996 requesting that as he had gone to Delhi for medical check-up, any date after 30 September 1996 may be fixed for the hearing. His letter was not accompanied by any documentary evidence regarding his illness or medical check-up. The Speaker, therefore, decided not to postpone the date of hearing.

Decision of the Speaker

Taking into consideration all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule, the Speaker, Shri C.B. Subba, pronounced his decision in the matter on 21 September 1996 as under:

> Initially ten members belonging to SSP including these six members were elected to the House. The six members voluntarily gave up their membership of their original political party on account of split and formed a separate group called SSP(R) which constitutes more than one-third of the original Legislature Party and therefore, this separation from their original party did not disqualify them from the membership of the House on account of their resignation/voluntarily giving up membership of their original political party.

The Speaker found that no useful purpose would be served in pursuing a petition which was not being pressed by the petitioner himself. Otherwise also, he found that the said six members had constituted a separate Group which constituted more than one-third of the original political party and therefore, they were saved from disqualification under clause 3 of the Tenth Schedule to the Constitution. As such, the Speaker allotted them separate seats in the House which was notified in Bulletin No.119 dated 21 March 1995 issued by the Sikkim Legislative Assembly Secretariat.

The petition filed by Shri K.N. Upreti was dismissed as not pressed.

Consequential Action

The order of the Speaker was published in the Assembly Bulletin Part II and notified in the State Gazette.

Tamil Nadu

S. Azhagu Thirunavukkarasu and G. Viswanathan Case (TNLA, 1995)

Petition for disqualification filed against two expelled MLAs of AIADMK for having joined Marumalarchi Dravida Munnetra Khazhgam (MDMK) – On notice being issued by Assembly Secretariat to respondents seeking comments, they challenged the same in the High Court – Dismissed – Subsequently, respondents in their representations before Speaker contended: provisions of Tenth Schedule not applicable to expellees – Speaker held: expellees continue to belong to same party on whose ticket elected; respondents by joining another party voluntarily gave up the membership of their political party; they were liable for disqualification; respondents disqualified – Writ Petitions filed in High Court – Dismissed – Writ Petitions filed in Supreme Court – Court *inter alia* held: expulsion does not affect a member's party affiliation – There is no unattached category of member of House under Tenth Schedule –Writ Petition dismissed by Court.

Facts of the Case

On 6 March 1995, Shri Subburethinam, MLA, filed a petition under the Tenth Schedule to the Constitution of India read with the Members of the Tamil Nadu Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, praying for disqualification of Shri S. Azhagu Thirunavukkarasu, MLA, for having voluntarily given up membership of his original Party, *i.e.* the AIADMK. Smt. K. Mariam-Ul Asia, MLA also filed a petition against Shri G. Vishwanathan, MLA, stating *inter alia* that the respondent, an expellee of the AIADMK, by his act of joining another political party, had incurred disqualification under the Tenth Schedule.

It was averred in the petitions that the respondents, set up as the candidates by the All India Anna Dravida Munnetra Khazhagam (AIADMK) Party in the General Elections held in 1991, were elected as members of the Assembly. Later,

they were expelled from the AIADMK party on ground of their indulgence in anti-party activities. On 16 March 1994, the Speaker declared them as 'Unattached Members' of the Assembly. On 1 March 1995, the respondents openly declared that they had joined another party, *i.e.* the Marumalarchi Dravida Munnetra Khazhagam or MDMK. Later, the fact was confirmed by the General Secretary, MDMK in a press statement wherein it was stated that the strength of the MDMK had gone up. Under these circumstances, the petitioners prayed that the respondents be disqualified from the membership of the Assembly.

On 6 March 1995, the Speaker caused issue of separate notices to the respondents and called for their comments on the petitions.

The respondents, however, filed writ petitions in the Madras High Court challenging the said notice. The writ petitions were dismissed by Court.

Thereafter, the respondents filed representations before the Speaker, requesting for three weeks time for submitting their comments. Though no specific reason was given for extension, the Speaker allowed extension of one week, *i.e.* upto 21 March 1995. Later, the respondents submitted their comments dated 20 March 1995, requesting *inter alia* that since they were "Unattached Members" of the Assembly, the provisions of the Tenth Schedule to the Constitution of India regarding disqualification did not apply to them. They also prayed that the preliminary question as to whether the Tenth Schedule of the Constitution would apply in the case of 'Unattached Members' be decided first. The respondents who were given personal hearing by the Speaker on 28 March 1995, reiterated their request for adjudication of the preliminary question referred above. Interestingly, neither in the written submissions nor during the personal hearing the respondents denied that they had joined another party. The Speaker, however, declined to accede to this request and proceeded to consider the case on merit.

In this case, the two points which arose for consideration and determination were: (i) whether the provisions under paragraph 2 of the Tenth Schedule to the Constitution of India apply in respect of unattached members; and (ii) whether by joining another party, the respondents came under the rigors of the provisions of the Anti-defection Law which empowers the Speaker to disqualify the members from the membership of the House?

Decision of the Speaker

Considering the matter in detail, the Speaker, Shri R. Muthiah, gave his decision in the matter on 20 April 1995. The Speaker held that if a person is set up as a candidate for election by a political party and if he gets elected, he must be deemed

always to belong to the same party from which he was elected and if he joins another political party, it would amount to voluntarily giving up his membership of such political party and he will become subject to disqualification under paragraph 2 (1)(a) of the Tenth Schedule. In the light of the admitted facts and the view of the law held by him, particularly in view of the fact that the respondents had not denied in their explanation the joining of a new party, the Speaker opined that the respondents had incurred disqualification for being members of the Assembly under the relevant provisions of the Constitution and rules of the Assembly and had, thus, ceased to be the members of the Assembly with immediate effect.

Consequential Action

The Speaker's decision was notified in the official Gazette of the Government of Tamil Nadu.

Subsequent Developments

The respondents *vide* Writ Petitions filed before the Madras High Court challenged the aforesaid order of the Speaker dated 20 April 1995 and prayed for grant of an interim injunction to restrain the Speaker from giving effect to the aforesaid order. Though initially an order of injunction was passed, the learned Single Judge vacated the injunction by his order dated 26 April 1995 and dismissed the petitions. Aggrieved by the orders vacating interim injunction, the respondents then filed Writ Appeals. A Division Bench of the High Court noticing that the writ Appeals and the Writ Petitions raised the same issue, heard them together and disposed them of by a common judgment dated 29 September 1995. The Division Bench saw no merit. whatsoever in the Writ Petitions / Writ Appeals and dismissed them.

It was the said common judgment of the High Court against which the respondents filed Appeals by Special Leave in the Supreme Court. The main contention of the submissions made by the learned Counsel of appellants was that paragraph 2(1)(a) of the Tenth Schedule to the Constitution is applicable only to disqualify a member who voluntarily gives up his membership of the political party that had set him up as a candidate, and not when he is expelled from the party and declared "Unattached", *i.e.* not belonging to any political party.

The Counsel for the respondents submitted that the deeming provisions contained in the explanation to the Tenth Schedule should be given full effect and in the light of the finding that the appellants had joined another political party, the High Court was justified in confirming the conclusion of the Speaker that the appellants had voluntarily given up their membership of the political party that had set them up as candidates and had thereby incurred disqualification for being members of the

Assembly.

Considering the matter in the light of the relevant judgments rendered earlier by the Supreme Court, namely Kihota Hollohon vs Union of India and Others Case and Ravi S. Naik vs Union of India and Others Case etc., the Supreme Court held that labelling of a member as 'Unattached' finds no place nor has any recognition in the Tenth Schedule. The classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House, (1) one who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a member otherwise than as a candidate set up by any political party – usually referred to as an 'Independent' candidate in the election; and (3) one who has been nominated. The categories mentioned are exhaustive. The Supreme Court held that it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule to the Constitution. The Supreme Court was, therefore, of the opinion that the deeming fiction must be given full effect for otherwise the expelled member would escape the rigor of the law which was intended to curb the evil of the defections.

The Supreme Court finally held that the judgment of the High Court declining to interfere with the order of disqualification passed by the Speaker, Tamil Nadu Legislative Assembly, called for no interference in these Appeals.

M. Muthuramalingam Case (TNLA, 2000)

Voluntarily giving up membership of Dravida Munnetra Khazhagam (DMK) – Petition filed seeking disqualification under para 2(1)(a) of the Tenth Schedule – Respondent tendered resignation from membership of Assembly – Resignation not furnished in prescribed form; and respondent submitted resignation after joining another political party – Petition allowed – Respondent disqualified.

Facts of the case

Shri M. Muthuramalingam was elected to the Eleventh Tamil Nadu Legislative Assembly as a candidate of the Dravida Munnetra Khazhagam (DMK) Party.

On 28 June 2000, Shri B. Arunkumar, MLA filed a petition under the Tenth Schedule to the Constitution against Shri M. Muthuramalingam praying for his disqualification from the membership of the Assembly for voluntarily giving up his membership of the DMK.

It was averred in the petition that on 28 June 2000, the respondent openly declared that he had joined the All India Anna Dravida Munnetra Khazhagam (AIADMK) Party. Later, this fact was admitted by that Party in a press release. The petitioner enclosed several press clippings with his petition in support of the said averments. He *inter alia* stated that the respondent had joined another party and hence become liable to be disqualified from the membership of the Assembly under the provisions of the Tenth Schedule.

A copy of the petition alongwith enclosures was forwarded to the respondent for his comments.

Shri M. Muthuramalingam, in his letter dated 28 June 2000, informed the Speaker that he joined the AIADMK Party on 27 June 2000 and tendered resignation from the membership of the Assembly with effect from 28 June 2000 and requested the Speaker to accept his resignation. The resignation was, however, not in the form prescribed under the Rules and this was communicated on telephone to Shri Muthuramalingam by the Secretary, Tamil Nadu Legislative Assembly.

The respondent in his comments received in the Speaker's Office on 3 July 2000, stated that he had already resigned his seat on 28 June 2000 and the resignation letter had been sent to the Speaker by fax which was self-explanatory in regard to

the reasons asked for the resignation under Rule 10 of the Tamil Nadu Legislative Assembly Rules. Hence, the said letter along with the present one might be treated as his explanation.

Decision of the Speaker

After taking into account all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule to the Constitution, the Speaker, Shri P.T.R. Palanivel Rajan, pronounced his decision on 8 July 2000. The Speaker *inter alia* took cognizance of the following facts:

(i) the respondent had not furnished his resignation in the prescribed form;

(ii) he had resigned his seat as a member of the Legislative Assembly *w.e.f.* 28 June 2000, which was subsequent to his joining another political party *viz.* AIADMK on 27 June 2000; and

(iii) he had not denied any of the contentions of the petitioner in his petition.

The Speaker, therefore, declared that the respondent had incurred disqualification for being a member of the Tamil Nadu Legislative Assembly under article 191 (2) of the Constitution of India read with clause (a) of sub-paragraph (1) of paragraph 2 of the Tenth Schedule and, accordingly, he had ceased to be a member of the Assembly with effect from 27 June 2000.

Consequential Action

The orders of the Speaker were notified in the Tamil Nadu Government Gazette Extraordinary, dated 8 July 2000.

Tripura
(Tripura LA)

No information is available.

Uttar Pradesh

Lok Dal (B) Merger Case (UPLA, 1990)

Claim of merger of Lok Dal (B) with Janata Dal by 2 members – Confirmed by party being merged with – Allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

In the Tenth Uttar Pradesh Legislative Assembly, the Lok Dal (B) Legislature Party had two members. On 11 January 1990, Shri Mohammed Saeed 'Bhramar' and Shri Ram Tej, both MLAs belonging to the Lok Dal (B) in the Assembly, in a jointly signed letter addressed to the Speaker, intimated that their Legislature Party had merged with the Janata Dal. The Leader of the Janata Dal Legislature Party also accepted the merger in writing on the above letter. Thereafter, both the members met the Speaker and requested him to recognise the merger.

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the Speaker, Shri Hari Kishan, gave his order dated 12 January 1990 under the Tenth Schedule in the matter. As the Lok Dal (B) Legislature Party had only two members in the Assembly, the Speaker found that the merger fulfilled the requirements stipulated under the Anti-Defection Law. Accordingly, the Speaker allowed the merger of the Lok Dal (B) with the Janata Dal as per provisions of para 4 of the Tenth Schedule to the Constitution. Accordingly, Shri 'Bhramar' and Shri Ram Tej were treated as members of the Janata Dal in the Assembly.

Janata Party (JP) Merger Case (UPLA, 1990)

Claim of merger of Janata Party (JP) with Janata Dal by lone member – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

In the Tenth Uttar Pradesh Legislative Assembly, the Janata Party (JP) Legislature Party had one member. On 6 June 1990, Shri Rajadhari, the lone MLA belonging to the Janata Party (JP), in his letter dated 13 June 1990 addressed to the Speaker, intimated that as per an announcement made at Sikandarpur, Balia on 6 June 1990, his Party had merged with the Janata Dal. The President, Janata Dal also accepted the merger. Shri Rajadhari, therefore, requested the Speaker to allow the merger and consider him as a member of the Janata Dal Legislature Party.

Decision of the Speaker

After considering the facts and material on record, the Speaker, Shri Hari Kishan, gave his order dated 20 June 1990 under the Tenth Schedule in the matter. Since Shri Rajadhari was the lone member of the Janata Party (JP) in the Assembly, the merger was found valid in terms of para 4 of Tenth Schedule. The Speaker, accordingly allowed the merger.

Janata Dal Split Case (UPLA, 1990)

Claim of split in Janata Dal Legislature Party by 121 MLAs out of the total 210 MLAs – Splitaway Group formed new party by the name of Janata Dal (Samajwadi) – Taken cognizance of in terms of para 4 of Tenth Schedule – Separate seats allocated to members of splitaway Groups.

Facts of the Case

On 6 October 1990, the Janata Dal Legislature Party had 210 members in the Uttar Pradesh Legislative Assembly and Shri Mulayam Singh Yadav was its Leader. The Speaker was informed that there was a split in the Janata Dal Legislature Party and as a result thereof it had been divided into two separate groups led by Shri Mulayam Singh Yadav and Shri Revati Raman Singh, respectively. Later, Shri Mulayam Singh Yadav *vide* his letter dated 26 November 1990 informed the Speaker that a new Group, *i.e.* the Janata Dal (Samajwadi), with 123 members had been formed under his leadership. Similarly, Shri Diwakar Vikram Singh, MLA, in a separate communication dated 18 November 1990, informed the Speaker regarding election of Shri Revati Raman Singh as the Leader of the Party. On 19 November 1990, a list of 95 MLAs containing signatures inter alia of Shri Revati Raman Singh was submitted to the Speaker. Eighty nine Legislators signed in the presence of the Speaker. Later, Shri Rai Luxmi Narain and Smt. Reshma Arif, both MLAs, also sent letters of support to the Group led by Shri Revati Raman Singh.

Decision of the Speaker

Having regard to the relevant provisions of the Tenth Schedule to the Constitution read with the Members of the Uttar Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1987, the Speaker noted that there was a split in the Janata Dal Legislature Party leading to formation of two separate Groups led by Shri Mulayam Singh Yadav and Shri Revati Raman Singh. However, on scrutiny of the lists of members provided by Shri Yadav and Shri Singh, the Speaker found that names of five members, *Sarvashri* Bhopal Singh, Amir Alam, Rai Luxmi Narain, Shafiquar Rahman Bark and Ram Saran Singh, appeared in both the lists. Later, Shri Bark and Shri Bhopal Singh in a meeting with the Speaker confirmed their support to the Group led by Shri Mulayam Singh Yadav.

After consideration of the facts and circumstances of the case and the material on record, the Speaker gave his order dated 26 November 1990 in the matter. In his decision, the Speaker, while taking cognizance of the split, recognised the Janata Dal (Samajwadi) which had 120 members.* He also recognised the second faction led by Shri Revati Raman Singh as the Janata Dal, which had 88 members.**

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* *Sarvashri* Parmai Lal, Ram Lakhan Yadav, Gaya Prasad Verma, Har Narayan, Rajendra Singh, Om Prakash, Om Prakash Yadav, Ramtej, Satrudra Prakash, Rammurti Singh, Ashok Vajpayee, Rudra Prasad, Sayyad Liyaqat Hussain, Goverdhan Singh, Dharma Pal Yadav, Muktinath, Chhannulal Shastri, Indel Singh Chauhan, Sharda Nand Anchal, Ramrati Vind, Balram Yadav, Kunwar Arun, Jagmohan Singh Yadav, Babu Ram Yadav, Chaudhary Sankar Singh, Vipin Bihari, Babu Lal Saroj, Satya Prakash Sonker, Maharaj Singh Yadav, Ram Govind Chaudhary, Abhimanyu, Dayashankar, Naresh Chand Uttam, Mulayam Singh Yadav, Rajender Tripathi, Hirdaya Narayan, Gopinath Verma, Deepchand Sonker, Harish Kumar Gangwar, Shyam Lal Rawat, Praveen Singh Airan, Sardar Singh, Harphool Singh, Ramsharan Das , Mantri Prasad Naithani, Surender Kumar Dubey, Barfia Lal Juantha, Rajmani Pandey, Sant Bux Rawat, Mohammed Syed Bhramer, Surya Bhan Singh, Sangam Lal Shukla, Ram Asre Agnihotri, Mata Prasad Pandey, Vikramaditya Pandey, Janardan Prasad Ojha, Gyanendra Swaroop, Hardev Singh, Nihala Singh, Pradeep Kumar Yadav, Suresh Yadav, Sharmendra Tyagi, Ashok Kumar, Ratan Lal *alias* Deena, Prabhu Dyal Yadav, Paras Nath Yadav, Rajpati, Ram Karan Arya, Munshi Lal, Rajdhari, Gauri Shankar Bhaiya, Jai Shankar Pandey, Dhani Ram Verma, Awadhesh Prasad, Prakash Singh, Jamuna Prasad Bose, Rameshwar Dayal Balmiki, Ravinder Nath Tewari, Ram Chhabila, Ram Dular Singh, Achal Singh, Balbir Singh, Swami Nempal, Chand Pal Singh, Shamin Ahmad, Yashwant, Shiv Kumar Berra, Daulat Ram, Durga Prasad Yadav, Lalta Prasad Yadav, Ashok Kumar Singh, Kashi Prasad, Pyare Lal Shankhwar, Suresh Chand Singh Yadav, Anwar Mohammad Khan, Kaliyan Singh Dohre, Ram Bux Verma, Devi Prasad, Narendra Singh Bhandari, Kaptan Singh, Ram Asre Paswan, Virendra Singh, Madan Govind Rao, Rakesh Dhar Tripathi, Radhey Shyam Bhartiya, Babu Singh Yadav, Beni Prasad Verma, Mohammad Azam Khan, Atar Singh Yadav, Kali Charan, Chand Vijay Singh, Virendra Singh Solangi, Bahadur Singh, Dharamveer Singh Baliyan, Kripa Shankar Arya, Bhopal Singh, Shafeeqar Rahman Bark, Smt. Savitri Devi, Smt. Vijaya Laxmi, Smt. Sukhda Mishra.

** *Sarvashri* Sachchidanand Vajpayee, Ravindra Raghav, Raghubar Dayal Verma, Mandleshwar Singh, Moti Lal Dehalvi, Jhaggar Singh, Sahab Singh, Richhpal Singh Bansal, Parwez Halim Khan, Narendra Singh, Somansh Prakash, Harendra Singh, Virendra Singh, Charan Singh, Prabhu Dayal, Dr. G.S. Vinod, Bhagwan Singh Shakya, Mahavir Singh Azad, Virendra Nath Dixit, Sukhbeer Singh Gehlot, Mahendra Singh Bhati, Vijay Singh Rana, Aridaman Singh, Badan Singh, Edal Singh, Narendra Singh Bhati, Ganga Ram, Mustemand Ali Khan, Hoshiar Singh, Suresh Pratap Gandhi, Jagveer Singh, Sunder Lal, Manohar Lal, Chand Bhan Singh, Bhola Singh, Bramha Shankar Tripathi, Dewata Deen, Harivansh Sahay, Vishwa Nath, Arun Pratap Singh, Inder Bhadra Singh, Ashok Pandey, Divakar Vikram Singh, Ram Lalit Chaudhary, Mahendra Pratap Singh, Vishram Das, Sharda Pratap Shukla, Jagdish Chand, Ravidas Mehrotra, Yadunath Singh, Narendra Pal Singh, Ashok Kumar Singh, Kunwar Sarwraj Singh, Mohammad Rizwanul Haq, Jagram Singh, Sukbeer Singh, Tejpal Singh, Jwala Prasad Yadav, Mukhtar Anees, Kedar Nath Singh, Jagdish Lal, Sharda Prasad Rawat, Markandey Chand, Thakur Virendra Singh, Master Kanwar Pal, Mohammad Aslam Khan, Rajit Prasad Yadav, Kiran Pal Singh.

Later, the Speaker, Shri Hari Kishan, *vide* his order dated 6 December 1990, allowed inclusion of Shri Amir Alam's name in the Janata Dal (Samajwadi) Party's list and those of Shri Ram Saran Singh and Shri Rai Luxmi Narain in the Janata Dal's list. With this order, while the strength of the Janata Dal (Samajwadi) reached 121, the strength of the Janata Dal remained at 88. Accordingly, the members belonging to the two Groups were allocated separate seats in the House.

Chand Shekhar Singh, Rewati Raman Singh, Om Prakash Divakar, Mool Chand, Ramesh Karan, Jageshwar, Chander Bhan Maurya, Bhagwan Deen Kushwaha, Ganesh Dixit, Anugraha Narayan Singh, Bhudhar Narayan Singh, Johri Lal Trivedi, Mohammad Hyat, Rajnath Sonkar Shastri, Smt. Reshma Arif, Smt. Sharda Devi, Smt. Gauri Devi, Smt. Vimla Rakesh.

Dharam Pal Case (UPLA, 1990)

Petition for disqualification filed against a member of Congress (I) Party for having defied whip – Respondent contended that as there was no record of division in the Assembly, it could not be officially claimed that he abstained from voting – Speaker rejected the plea on the ground that Division was held by voice vote and subsequently by raising hands of which no records are kept – Leader, Legislature Party asked to confirm whether respondent's act was condoned or not – No reply received despite several reminders – Petition dismissed.

Facts of the Case

On 30 November 1990, Shri Pramod Tewari, Chief Whip of the Uttar Pradesh Congress (I) Legislature Party, gave a petition under the Tenth Schedule to the Constitution and Rules made thereunder against Shri Dharam Pal, MLA, for having defied the whip issued by his party, i.e. the Congress (I) Legislature Party. As Shri Dharam Pal's action was not condoned by the Leader of the Congress (I) Legislature Party, the petitioner prayed that he may be declared disqualified from membership of the Legislative Assembly in terms of provisions of para 2(1)(b) of the Tenth Schedule and the Members of the Uttar Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1987.

In his petition, the petitioner contended that Shri Mulayam Singh Yadav, Chief Minister, had moved a Confidence Motion in the Assembly on 20 November 1990. A whip was issued to the members of the Congress(I) Legislature Party to support the Motion. The respondent, however, announced his intention to oppose the Motion disregarding the whip and finally voted against it.

In his comments on the petition, the respondent *inter alia* raised the point that since there was no record of division held in the Assembly on 20 November 1990, it could not be claimed officially that he had voted against the Motion. On examination of the Assembly records, the Speaker *vide* his ruling dated 27 March 1991 while rejecting this point observed that the division was held first through the voice vote and later on by raising hands and the records in either of the two types of division are not kept.

Decision of the Speaker

As the confirmation regarding condonation or otherwise of the violation of party whip by the respondent was not received from the Leader of Congress (I) Legislature Party, deeming that the Leader of the Congress (I) Legislature Party did not want to pursue the petition in question, the Speaker dismissed the same.

Janata Party Split Case (UPLA, 1992)

Claim for split in Janata Party Legislature Party by 23 out of the total 33 members – Splitaway Group formed new party by the name of Samajwadi Party – Taken cognizance of in terms of para 3 of Tenth Schedule – Members of new party allotted separate seats.

Facts of the Case

On 29 September 1992, the Janata Party Legislature Party had a strength of 33 members in the Eleventh Uttar Pradesh Legislative Assembly. On 29 September 1992, Shri Mulayam Singh Yadav, MLA, alongwith 22* other MLAs belonging to the Janata Party Legislature Party, in a letter addressed to the Speaker, intimated that there was a split in their original Party and as a result thereof they had formed a new Party by the name of Samajwadi Party with Shri Beni Prasad Verma as its Leader. It was stated in the letter that the new Party consisted of 23 members out of the total strength of 33 members of the undivided Party. Shri Yadav and others requested the Speaker to take cognizance of the split and recognize the new Party and allocate separate seats to its members.

Decision of the Speaker

After considering the facts and circumstances of the case and material on record, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 29 September 1992 under the Tenth Schedule in the matter. As members consisting of more than one-third of the total strength of the undivided Janata Party Legislature Party had formed the new Party, the split was valid in terms of para 3 of the Tenth Schedule to the Constitution of India. In this connection, all the 23 members belonging to the splitaway Group also confirmed the facts obtaining in the matter, in person before the Speaker. Accordingly, the Speaker took cognizance of the split and formation of the new Party. Besides, he also ordered for separate seating arrangements for members of the splitaway Group.

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* *Sarvashri* Beni Prasad Verma, Arvind Pratap Singh, Awadh Pal Singh Yadav, Banwari Singh Yadav, Dhani Ram Verma, Indra Pal Singh, Shyam Lal Rawat, Maharaj Singh Yadav, Rameshwar Dayal Valmiki, Ram Autar Shakya, Babu Ram Yadav, Balram Yadav, Mohammad Azam Khan, Ram Murti Singh, Kaptan Singh, Sant Bakhsh Rawat, Jagram Singh, Shiv Kumar Beria, Hardev Singh, Radhey Shyam Verma, Kunwar Akhilesh Singh and Hridaya Narayan.

Communist Party of India Split Case (UPLA, 1994)

Claim for split in Communist Party of India by 1 out of the total 3 members – Splitaway Group formed new group by the name of Samatawadi Group – Split found valid in terms of para 3 of Tenth Schedule and taken cognizance of – Splitaway Group merged with Samajwadi Party – Confirmed by Samajwadi Party – Merger allowed in terms of para 4 of Tenth Schedule – Member treated accordingly.

Facts of the Case

The Communist Party of India had three members in the Twelfth Uttar Pradesh Legislative Assembly. On 4 March 1994, Shri Mitrasen Yadav, MLA belonging to the Communist Party of India or the CPI, gave a letter dated 4 March 1994 to the Speaker intimating that there was a split in his Party and as a result he had formed a new Group by the name of the Samatawadi Group. He requested the Speaker to recognise the Samatawadi Group and allot him a separate seat in the House.

Decision of the Speaker

After considering the facts and material on record, the Speaker *vide* his order dated 4 March 1994 held that since one out of the three members of CPI had claimed the split, which constituted one-third of the original Party, the split was valid under para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on 4 March 1994, Shri Yadav again met the Speaker and intimated that his single-member Samatawadi Group had merged with the Samajwadi Party. The Leader of the Samajwadi Party also confirmed the merger. After taking into account the provisions of the Tenth Schedule to the Constitution of India, the Speaker *vide* his order dated 4 March 1994 held that the merger was valid under para 4 of the Tenth Schedule. Accordingly, he allowed the merger.

Janata Dal Split Case - I (UPLA, 1994)

Claim for split in Janata Dal Legislature Party by 10 out of the total 27 members – Splitaway group formed new Group by the name of Samata Group – Taken cognizance of in terms of para 3 of Tenth Schedule – Splitaway Group merged with Samajwadi Party – Confirmed by Samajwadi Party – Merger found valid in terms of para 4 of Tenth Schedule – Members treated accordingly.

Facts of the Case

On 24 March 1994, the Janata Dal Legislature Party had a strength of 27 members in the Twelfth Uttar Pradesh Legislative Assembly. On 24 March 1994, *Sarvashri* Brahma Shankar Tripathi, Jawala Prasad Yadav, Arimardan Singh, Sameer Bhati, Satish Kumar, Ram Adhar, Mukhtar Anees, Haji Mohammad Hyat, Munnavar Hasan and Mohammad Akhalaq, all MLAs belonging to the Janata Dal Legislature Party, met the Speaker and submitted a letter to him intimating that there was a split in their Party and as a result they had formed a new Group, i.e. the Samata Group, with Shri Brahma Shankar Tripathi as its Leader. Submitting that 10 out of the 27 members constituted one-third of the total strength of the Janata Dal Legislature Party, they requested the Speaker to take cognizance of the split and recognize their Group in terms of para 3 of the Tenth Schedule to the Constitution.

Decision of the Speaker

The Speaker read out the letter in the presence of the above mentioned 10 members, who not only confirmed the facts but also signed it. After considering the facts and circumstances of the case, the Speaker, Shri Dhani Ram Verma, *vide* his order dated 24 March 1994, found the split valid in terms of para 3 of the Tenth Schedule. Accordingly, he took cognizance of the split.

Subsequent Developments

Later, on 30 March 1994, Shri Brahma Shankar Tripathi met the Speaker and gave a letter intimating that the Samata Group had merged with the Samajwadi Party. Eight out of the 10 MLAs of the Samata Group, constituting more than two-thirds of the total strength of the party, appeared and signed before the Speaker

confirming the merger. Shri Mulayam Singh Yadav, the Leader of the Samajwadi Party also recorded his acceptance of the merger on the letter. The merger was found valid. Accordingly, the merger was recognised by the Speaker *vide* his order dated 30 March 1994.

Janata Dal Split Case - II (UPLA, 1994)

Claim of split in Janata Dal Legislature Party by 7 out of the 17 members – Splitaway Group formed new Group by the name of Samata Group – Taken cognizance of in terms of para 3 of Tenth Schedule – New Group merged with Samajwadi Party – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule – Members treated accordingly.

Facts of the Case

On 23 June 1994, the Janata Dal Legislature Party had a strength of 17 members in the Twelfth Uttar Pradesh Legislative Assembly. On 23 June 1994, seven MLAs belonging to the Janata Dal Legislature Party, *viz.*, *Sarvashri* Ashok Kumar Singh Chandel, Vijay Singh, Madan Gopal Verma, Rakesh Sachan, Virendra Mohan Singh, Samarpal Singh and Vishwanath, met the Speaker and submitted a letter to him intimating that there was a split in their party and as a result they had formed the Samata Group with Shri Ashok Kumar Singh Chandel as its President. Submitting that the new Group constituted more than one-third of the total strength of the original Janata Dal Legislature Party, they requested the Speaker to recognise the new Group under para 3 of the Tenth Schedule. The Speaker read out the contents of the letter before the members who not only confirmed the facts but also signed on the letter.

Decision of the Speaker

After considering the facts of the case and the material on record, the Speaker, Shri Dhani Ram Verma, gave his decision dated 23 June 1994. As seven out of the total 17 members of Janata Dal Legislature Party constituted more than one-third of the undivided Janata Dal Legislature Party, the split was found valid in terms of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on 24 June 1994, the above-mentioned MLAs again met the Speaker and submitted an application to him intimating that their newly constituted Samata

Group had merged with the Samajwadi Party. Shri Mulayam Singh Yadav, the Leader of the Samajwadi Party, had also accepted the merger and signed to that effect. After considering the facts in the light of the provisions stipulated under para 4 of the Tenth Schedule, the Speaker found the merger valid. Accordingly, he recognised the merger *vide* his order dated 24 June 2003.

Janata Dal Split Case - III (UPLA, 1994)

Claim of split in Janata Dal Legislature Party by 4 out of the total 10 members – Splitaway group comprising of 4 members formed new party by the name of Pragatisheel Janata Dal – Taken cognizance of in terms of para 3 of Tenth Schedule – New party merged with Indian National Congress – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

On 29 June 1994, the Janata Dal Legislature Party had a strength of 10 members in the Twelfth Uttar Pradesh Legislative Assembly. On 29 June 1994, *Sarvashri* Narendra Singh, Charan Singh, Jagvir Singh and Prem Singh, all MLAs belonging to the Janata Dal, met the Speaker and submitted a letter to him intimating that there was a split in their original Party and as a result they had formed a new Party by the name of the Pragatisheel Janata Dal. They requested the Speaker to take cognizance of the split and recognize the new Party.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Dhani Ram Verma, gave his decision in the matter on 29 June 1994. The splitaway Group had four members out of the total 10 members of the undivided Janata Dal Legislature Party. All the four MLAs confirmed the fact regarding split before the Speaker. As the strength of the splitaway Group was more than one-third of the total strength of the original Party, the Speaker held the split as valid in terms of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split and formation of the new Party.

Subsequent Development

Later, on 29 June 1994, the above-mentioned four members again met the Speaker and submitted an application stating that the newly constituted Pragatisheel Janata Dal Group had merged with the Indian National Congress led by Shri P.V. Narasimha Rao. They requested the Speaker to allow the merger in terms of para 4 of the Tenth Schedule. After considering the provisions of para 4 of the Tenth Schedule, the Speaker found that the merger of the Pragatisheel Janata Dal with the Indian National Congress fulfilled the requirements stipulated therein. Accordingly, the Speaker allowed the merger *vide* his order dated 29 June 1994.

Janata Dal Split Case - IV (UPLA, 1994)

Claim of split in Janata Dal Legislature Party by 2 out of total 6 members – Splitaway faction of 2 members formed new Group by the name of Samata Group – Taken cognizance of in terms of para 3 of Tenth Schedule – Splitaway group merged with Samajwadi Party – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

On 22 July 1994, the Janata Dal Legislature Party had six members in the Twelfth Uttar Pradesh Legislative Assembly. On 22 July 1994, Shri Tejpal Singh and Shri Vishambhar Singh, both MLAs belonging to the Janata Dal, met the Speaker and jointly submitted a letter intimating that there was a split in their Party and as a result they had formed a new Group by the name of the Samata Group with Shri Vishambhar Singh as its Leader. They requested the Speaker to recognise the new Group in terms of para 3 of the Tenth Schedule to the Constitution.

Decision of the Speaker

After considering the facts and circumstances of the case and the material on record, the Speaker, Shri Dhani Ram Verma, gave his decision in the matter on 22 July 1994. The splitaway Group had two members out of the total six members of the undivided Janata Dal Legislature Party. Both the MLAs confirmed the fact regarding split before the Speaker. As the strength of the splitaway Group was one-third of the total strength of the original Party, the split was found valid under para 3 of the Tenth Schedule. Accordingly, the Speaker, took cognizance of the split.

Subsequent Developments

Later, on 22 July 1994, both the members again met the Speaker and gave him a letter intimating that the newly constituted Samata Group had merged with the Samajwadi Party. They requested the Speaker to allow the merger. The Speaker, Shri Dhani Ram Verma, in his decision dated 25 July 1994 found the merger valid as per para 4 of the Tenth Schedule. Accordingly, the merger was allowed.

Bharatiya Communist Party Split Case (UPLA, 1994)

Claim for split in Bharatiya Communist Party by 1 out of total 2 members – Splitaway faction formed new group by the name of Samata Group – Taken cognizance of in terms of para 3 of Tenth Schedule – Splitaway Group merged with Samajwadi Party – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule – Members treated accordingly.

Facts of the Case

The Bharatiya Communist Party had two members in the Twelfth Uttar Pradesh Legislative Assembly. On 7 September 1994, Shri Afzal Ansari, MLA belonging to the Bharatiya Communist Party, met the Speaker and gave him a letter intimating that there was a split in his original Party and as a result he had formed a separate Group by the name of the Samata Group. He, therefore, requested the Speaker to recognise the new Group.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Dhani Ram Verma, gave his decision in the matter on 7 September 1994. As the strength of the splitaway Group was more than one-third of the total strength of the original Party, the split was found to be valid under para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on the same day, Shri Afzal Ansari again met the Speaker and submitted a letter to him intimating that the newly constituted Samata Group had merged with the Samajwadi Party. He requested the Speaker to allow the merger. The Speaker found that the merger was valid as per para 4 of the Tenth Schedule. Accordingly, the merger was allowed.

Bahujan Samaj Party Split Case (UPLA, 1995)

Claim for split in Bahujan Samaj Party by 25 out of the total 69 MLAs – Splitaway faction of 25 MLAs formed new party by the name Bahujan Samaj Party (Raj Bahadur) – Taken cognizance of in terms of para 3 of Tenth Schedule – Fifteen days time given for other MLAs to join new Group – Another member joined new party – Allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

The Bahujan Samaj Party (BSP) had a strength of 69 members in the Twelfth Uttar Pradesh Legislative Assembly. On 3 June 1995, Shri Raj Bahadur and 24 other MLAs* belonging to the BSP met the Speaker and submitted a letter to him intimating that there was a split in their original Party and as a result they had formed the Bahujan Samaj Party (Raj Bahadur) or the BSP (Raj Bahadur) with Shri Raj Bahadur as its Leader. They requested the Speaker to recognise the new Party.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Dhani Ram Verma, gave his decision in the matter on 3 June 1995. There were 69 members in the BSP Legislature Party at the time of split. The number of MLAs in the splitaway Party, *i.e.* 25, was, therefore, more than one-third of the original Party. Accordingly, the Speaker took cognizance of the split under para 3 of the Tenth Schedule and ordered for separate seating arrangements for the members belonging to the new Party. Shri Raj Bahadur had submitted a separate letter stating that some more members willing to join him were out of Lucknow and some members had been forcibly detained. Therefore, he requested that he might be given 15 days' time to enable the willing members to join his Party. The Speaker

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* *Sarvashri* Mohsin, Mohammad Arshad Khan, Umakant Yadav, Uma Shankar Yadav, Ram Sevak Singh, Jokhu Lal Yadav, Masood Ahmed, Sangram Singh Yadav, Shriram Singh Kushwaha, Rajabali Jaisal, Ram Khelawan, Safdar Raza, Ram Achal Rajabhar, Ram Sajeevan Nirmal, Samai Ram, Jagannath Choudhury, Rajendra Kumar, Akshyawar Bhartiya, Shakeir Ali, Ramjeet Bharadwaj, Hafeez Irshad, Ishtiyaque Ansari, Fazlurrahman Ansari and Jawahar Lal Diwakar.

acceded to the request and allowed extra time of fifteen days to those members who wanted to join the new Group.

Subsequent Development

Later, on the same day, Shri Sriram Yadav, MLA, belonging to the BSP, requested the Speaker in writing that he might be allowed to join the BSP (Raj Bahadur) Party. Keeping in view the fact that he had given fifteen days' time to members willing to join the BSP (Raj Bahadur), the Speaker *vide* his order dated 3 June 1995 allowed Shri Sriram Yadav to join that Party.

Bahujan Samaj Party (Raj Bahadur) Split Case (UPLA, 1995)

Claim of split in Bahujan Samaj Party (Raj Bahadur) consisting of 26 members – Splitaway group formed new party by the name of BSP (Rajendra) Group consisting of 16 members – Taken cognizance of under para 3 of Tenth Schedule – New party merged with BSP – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

In the Twelfth Uttar Pradesh Legislative Assembly, on 23 June 1995, Shri Rajendra Kumar and 15 other MLAs* submitted an application to the Acting Speaker, Shri B.R. Verma, stating that the Speaker had taken cognizance of the Bahujan Samaj Party (Raj Bahadur) or BSP (Raj Bahadur) consisting of 26 members on 3 June 1995. Their names were also included as members of that Party in the Party list of the BSP (Raj Bahadur). They further stated that the signatures of 12 members out of the total 16 members mentioned in the letter claiming support for the BSP (Raj Bahadur) Party had been obtained forcibly by Shri Raj Bahadur and some members belonging to the Samajwadi Party without disclosing the contents of the letter to them. Besides, four members, Sarvashri Safdar Raza Khan, Jawahar Lal Diwakar, Ishtiyak Ansari and Fajlurrahman Ansari submitted that they had neither signed any document nor they had met the Speaker.

It was *inter alia* stated in the petition that 10 out of the above mentioned 16 MLAs had submitted written notices to this effect separately on 4 June 1995. They further stated that they were members of the Bahujan Samaj Party and if Shri Raj Bahadur had presented any paper claiming their support, it was baseless and the signatures had been made under duress or were forged. Besides, 14 of them had personally given a communication detailing facts to the Secretary, Legislative Assembly on 5 June 1995 and signed the same in his presence due to absence of the Speaker. It was also stated that even then, if they were recognized as members

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* *Sarvashri* Safdar Raza Khan, Jawahar Lal Diwakar, Fajlurrahman Ansari, Ishtiyak Ansari, Akshyawar Bharati, Jagannath Choudhary, Ram Achal Rajbhar, Irshaad, Ranjeet Bharadwaj, Ramai, Shivram Singh Kushwaha, Rajbali Jaisal, Ram Sevak Singh, Ram Sajivan Nirmal and Ram Khelawan.

of the BSP (Raj Bahadur), due to some reason, they might be considered part of a splitaway Group by the name of the BSP (Rajendra) Group. The 16 MLAs also submitted an affidavit in support of the facts stated in their communication. They requested that the BSP (Rajendra) Group be recognised in terms of para 3 of the Tenth Schedule.

Decision of theActing Speaker

After considering the facts and circumstances of the case, and the fact that the 16 members had presented themselves before him and signed the petition once again, the Acting Speaker gave his decision dated 24 June 1995 in the matter. As 16 out of the 26 members of the BSP (Raj Bahadur) Legislature Party constituted more than one-third of the total strength of the undivided BSP(Raj Bahadur) Legislature Party, the split was found valid under para 3 of the Tenth Schedule. Accordingly, the Acting Speaker took cognizance of the split and formation of the new Party led by Shri Rajendra Kumar by the name of the BSP (Rajendra) Group.

Subsequent Developments

On 24 June 1995, the above-mentioned 16 members again met the Acting Speaker and submitted a letter to him intimating that their Party, *i.e.* the BSP (Rajendra) Group had decided to merge with the BSP led by Shri Kanshiram. The letter carried the signature of the Leader of the BSP indicating his consent to the merger. After considering the provisions of para 4 of the Tenth Schedule to the Constitution, the Acting Speaker *vide* his order dated 24 June 1995 allowed the merger.

All India Indira Congress (Tiwari) Merger Case (UPLA, 1997)

Claim for merger of All India Indira Congress (Tiwari) with Indian National Congress by all the 4 MLAs – Confirmed by Party being merged with – Allowed in terms of para 4 Tenth Schedule.

Facts of the Case

The All India Indira Congress (Tiwari) or AIIC (T) Legislature Party had four members in the Thirteenth Uttar Pradesh Legislative Assembly. On 21 April 1997, *Sarvashri* Hari Shanker Tewari, Jagadambika Pal, Shyam Sunder Sharma and K.C. Singh Baba, MLAs, intimated the Speaker *vide* their letter dated 21 April 1997 that their original Party, *i.e.* the All India Indira Congress (Tewari) or AIIC(T) had merged with the Indian National Congress (INC). Submitting that they agreed with the merger at the national level, they requested the Speaker to recognize the merger and treat them as members of the INC. Shri Pramod Tewari, Leader, INC Legislature Party also conveyed his Party's approval to the merger.

Decision of the Speaker

After considering the facts and material placed before him, the Speaker, gave his order dated 23 April 1997 under the Tenth Schedule in the matter. The Speaker found the instant request valid in terms of the provisions contained in para 4 to the Constitution of India. Accordingly, he allowed the merger.

Indian National Congress Split Case (UPLA, 1997)

Claim for split made in Indian National Congress Legislature Party by 19 out of the total 37 MLAs – 19 Members who claimed split appeared in person before Speaker and confirmed facts – Leader of splitaway group informed that 3 other members of INC also belonged to splitaway Group – Splitaway group formed new Party by the name of Loktantrik Congress Party – Split taken cognizance of in terms of para 3 of Tenth Schedule – Members treated accordingly – The said 3 members who appeared subsequently before Speaker too were treated as belonging to splitaway Group.

Facts of the Case

The Indian National Congress had a strength of 37 members in the Thirteenth Uttar Pradesh Legislative Assembly. On 20 October 1997, Shri Naresh Agarwal and 18 other MLAs* belonging to the Indian National Congress Legislature Party, met the Speaker and handed over a letter to him intimating that consequent upon a split in their original Party they had formed the Loktantrik Congress Party with Shri Naresh Agarwal as its Leader. They requested the Speaker to recognize their newly formed Party. It was also submitted that three other MLAs, *Sarvashri* Amarmani, Vikramajeet Maurya and Baccha Pathak, had also consented to join their Party but could not appear before the Speaker due to some personal reasons.

Decision of the Speaker

After consideration of the facts and circumstances, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 21 October 1997 under the Tenth Schedule. It was held by the Speaker that the splitaway Group had more than one-third of the total strength of the undivided Indian National Congress, which was 37. The split, therefore, was found valid under para 3 of the Tenth Schedule to

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* *Sarvashri* Naresh Agarwal, Choudhary Laxminarayan, Satish Sharma, Dalveer Singh, Biharilal Arya, Vivek Kumar Singh, Pooran Singh Bundela, Ganga Bax Singh, Veerendra Singh, Vinay Pandey, Rakesh Tyagi, Fatch Bahadur Singh, Mandleshwar Singh, Saraswati Pratap Singh, Sangram Singh, Diwakar Vikram Singh, Hari Shankar Tiwari, Jagdambika Pal and Shyam Sunder Sharma.

the Constitution. Accordingly, the Speaker took cognizance of the split and ordered for separate sitting arrangement for the members belonging to the new Party. The Speaker also observed that if the remaining three members, namely *Sarvashri* Amarmani, Vikramajeet Maurya and Baccha Pathak, would confirm the fact of being members of the new Party, he would give his order in that regard separately.

Subsequent Developments

Subsequently, the remaining three members, *viz.*, *Sarvashri* Amarmani, Vikramajeet Maurya and Baccha Pathak, met the Speaker and intimated him that they supported the Loktantrik Congress Party. The Speaker *vide* two separate orders dated 21 October 1997 accepted their request and recognised them as members of the Loktantrik Congress Party in the Legislative Assembly.

Janata Dal Split Case (UPLA, 1997)

Claim for split in Janata Dal Legislature Party by 3 out of the total 7 members – Splitaway Group of 3 members formed new party by the name of Janata Dal (Rajaram Pandey) – Split taken cognizance of in terms of para 3 of Tenth Schedule – Members treated accordingly.

Facts of the Case

The Janata Dal Legislature Party had initially a strength of seven members in the Thirteenth Uttar Pradesh Legislative Assembly. On 20 October 1997, *Sarvashri* Rajaram Pandey, Ramashrey Paswan and Rampal Rajavanshi, all MLAs belonging to the Janata Dal Legislature Party , met the Speaker and handed over to him a letter intimating that there was a split in their original Party and as a result they had formed a new Party by the name of the Janata Dal (Rajaram Pandey) with Shri Rajaram Pandey as its Leader. They requested the Speaker to recognize the new Party. All the three members confirmed the averments made by them in their claim for split personally before the Speaker.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 20 October 1997 under the Tenth Schedule. As the strength of the splitaway Group, which was three, was more than one-third of the total strength of the original Party, *i.e.* seven, the Speaker found the split valid under para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Vansh Narayan Singh and Others Case (UPLA, 1997)

Petitions for disqualification filed for alleged defiance of whip under para 2 (1) (b) of Tenth Schedule; subsequently petitioners sought to amend petitions seeking disqualification of respondents under para 2 (1) (a) – Allowed by speaker – Petition accordingly amended – Respondents contended: (i) whip became ineffective by subsequent verbal directions issued by Leader of BSP Legislature Party, (ii) there was a vertical split in BSP leading to formation of a new party by the name of Janatantrik Bahujan Samaj Party (JBSP), (iii) they were part of the duly recognised splitaway Group – Further split in splitaway Group claimed – Speaker held: whip became ineffective by subsequent verbal instructions by Leader of Legislature Party; split in original party and subsequent split in splitaway Group held valid – Petition disallowed under Tenth Schedule – Special Leave Petition in Supreme Court filed – Referred to Constitution Bench – Bench yet to be constituted.

Facts of the Case

On 24 October 1997, *Sushri* Mayawati, the Leader of the Bahujan Samaj Party (BSP) filed twelve petitions against Shri Vansh Narayan Singh and 11 other MLAs* under para 2(1)(b) of the Tenth Schedule to the Constitution for having defied a whip issued by their original political party. Similarly Shri R.K. Chaudhary, MLA belonging to the BSP, also filed twelve petitions against these 12 MLAs on the same ground. The petitioners prayed that by their act of defiance of the whip, the respondents were liable to be disqualified for being members of the Assembly under article 191(2) of the Constitution of India and the Tenth Schedule read with the Uttar Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, (hereinafter referred to as Assembly Anti-defection Rules) 1987.

The petitioners averred in the petitions that they and the respondents were elected on the ticket of the BSP, which had 64 MLAs in the Thirteenth Legislative Assembly. On 20 October 1997, *Sushri* Mayawati, the Leader of the BSP issued a

* Shri Markandeya Chand, Chaudhary Narendra Singh, Sardar Singh, Shivendra Singh, Prem Prakash Singh, Raja Gaznafar Ali Khan, Radhey Shyam, Yashwant Singh, Bhagwan Singh Shakya, Sukhpal Pandey and Ram Asrey Singh Khushwaha.

whip to the BSP MLAs to oppose a Confidence Motion moved by the BJP Government led by Shri Kalyan Singh. The respondents, however, voted in favour of the Motion and thereby violated the whip. The petitioners, therefore, contended that the respondents had become ineligible for being members of the Assembly. As the petitions were identical in nature, the same were considered together by the Speaker. Copy of the whip dated 20 October 1997 and other documents were enclosed with the petitions.

Having found the petitions in order, the Speaker caused notices to be issued to the respondents directing them to file their comments and fixed 21 November 1997 as the date for evidence and hearing. Subsequently, on a request made by the respondents, the date for evidence/hearing was extended upto 26 November 1997, by the Speaker.

The respondents filed their statements wherein they denied the allegations made in the petitions. They also *inter alia* pleaded that the petitions were liable to be dismissed for non-compliance of provisions of Rules 7(4), (5) and (6) of the Assembly Anti-defection Rules, 1987. The respondent also contended that the whip dated 20 October 1997 was withdrawn/superceded/waived and became non-existant due to subsequent directions given by *Sushri* Mayawati, Leader of the BSP on 21 October 1997 to create disturbance, so that the Motion of Confidence could not be tabled in the House. Besides, the respondents contended that in a significant development, the BSP Legislature Party had vertically split and a separate Group of more than one-third of the BSP MLAs (the total of which ultimately reached 26) was constituted under the leadership of Shri Markanday Chand by the name of the Janatantrik Bahujan Samaj Party (JBSP). Except Shri Bhagwan Singh Shakya, none of the other respondents denied having received the alleged whip dated 20 October 1997. Shri Shakya, in an affidavit, denied having received the copy of the whip.

Thereafter, the petitioners filed separate, but identical rejoinders dated 26 November 1997 in response to the statements of the respondents. They pleaded that the whip dated 20 October 1997 was not withdrawn/superceded/waived in any way. The petitioners, however, did not deny the fact that there was a vertical split in the BSP Legislature Party, leading to formation of a separate Group. Similarly, Shri R.K. Chaudhary, the second petitioners filed a reply to Shri Shakya's affidavit, disputing the facts therein. Later, the petitioners sought to amend their petitions by adding paras 7-A and 7-B in the original petitions, wherein they sought disqualification of the respondent in terms of provisions of para 2(1)(a) of Tenth Schedule to the Constitution. In these additional paras the petitioners contended that the respondents

had voluntarily given up the membership of the BSP as was clear from their plea of vertical split and from the fact that they were Ministers in the Kalyan Singh Government. Despite strong protest by the respondents, the Speaker allowed these amendments. The respondents filed written statements to the amended petitions on 15 December 1997, reiterating their earlier plea and denying the averments incorporated through amendments by the petitioners.

In an affidavit presented by Chaudhary Narendra Singh, one of the respondents, on 25 February 1998, it was brought to the notice of the Speaker that there was a further split in the splitaway Group, resulting in depletion of the strength of the splitaway Group. In the meantime the date of hearing by the Speaker in the matter was extended more than once to provide proper opportunity to the petitioners and the respondents. The hearing by the Speaker in the matter which commenced on 24 February 1998, continued for two days and concluded on 25 February 1998. During the course of the hearings, the respondents filed two affidavits containing a list of 26 MLAs who formed part of the splitaway Group on 21 October 1997. After hearing at length the arguments of the Counsels of the petitioners and the respondents, orders were reserved on 25 February 1998. Later, on 10 March 1998, the respondents filed another set of affidavits repeating averments made by them earlier.

After consideration of the facts and material on record, the following issues were framed:

(i) Whether the alleged whip/direction had been issued in accordance with paragraph 2(1) (b) of the Tenth Schedule to the Constitution of India and was it legally valid?

(ii) Whether the petitions complied with the requirements of sub-rules (4), (5) and (6) of Rule 7 of the Assembly Anti-defection Rules, 1987 ?

(iii) Whether the petitions did contain the necessary statement of material facts?

(iv) Whether the petitions were liable to be rejected under Rule 8(2) of the aforesaid Rules?

(v) Whether the whip/direction dated 20 October 1997 became meaningless, ineffective and non-existent on the basis of the facts stated in the respondents' written statements?

(vi) Whether on 21 October 1997 a group was formed in the BSP Legislature Party under paragraph 3 of Tenth Schedule to the Constitution representing the Group which had arisen as a result of

split in BSP and whether there were at least one-third members of BSP Legislature Party in such group?

(vii) Whether the respondents had violated the whip/direction dated 20 October 1997 issued by *Sushri* Mayawati, the Leader of, Bahujan Samaj Legislature Party?

(viii) Whether the respondents were liable to be disqualified for being members of the Uttar Pradesh Legislative Assembly under paragraph 2(1) (b) of the Tenth Schedule to the Constitution of India and whether the petitioners were entitled to get such a declaration?

Decision of the Speaker

After consideration of the facts, circumstances and material on record, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 23 March 1998 under the Tenth Schedule. Regarding issue No. 1, the Speaker held that the direction/whip dated 20 October 1997 by *Sushri* Mayawati was not issued with the authority specified in paragraph 2(1)(b) of the Tenth Schedule to the Constitution of India and as such it was unconstitutional and illegal. The respondents were, therefore, not liable to be disqualified under the said paragraph 2(1)(b) for voting or abstaining from voting contrary to it. Issue No.1 was decided in negative.

Similarly, having gone through provisions of the Tenth Schedule and on perusal of various judicial pronouncements, the Speaker arrived at the conclusions that the petitions did not fulfil the requirements of Rule 7(4)(a) of the Assembly Disqualification Rules, 1987 inasmuch as they did not contain a statement of material facts and consequently the petitions were liable to be dismissed under Rule 8(2) of the said Rules. Issue 2, 3 and 4 were accordingly decided by the Speaker. Regarding issue No.5, the Speaker held that *Sushri* Mayawati had in fact issued the direction dated 20 October 1997 to the BSP MLAs for creating disturbance and committing violence in the House on 21 October 1997 and that the whip issued by her on 20 October 1997 was superceded/withdrawn/waived, and made ineffective and non-existent by her subsequent directions to the MLAs. As such the respondents could not be disqualified for being members of the Uttar Pradesh Legislative Assembly for having voted contrary to the whip/direction dated 20 October 1997 which had been annexed to the petitions and also quoted in paragraph 4 thereof.

Coming to issue No. (vi) and the question of split within split, the Speaker held that on 21 October 1997, there was a split in the BSP as a result of which there arose a faction of the party and the 26 MLAs, who were more than one-third

member of the Bahujan Samaj Legislature Party, constituted a Group representing that faction. Consequently this Group became the original political party of those members in the Uttar Pradesh Legislative Assembly and was known as the JBSP. These MLAs were thus entitled for protection under paragraph 3 of the Tenth Schedule to the Constitution. He further held that after the split of the BSP and formation of the Group of the said 26 MLAs on 20 October 1997, there was a further split in the JBSP on 15 January 1998 as a result of which only 19 MLAs continued to remain members of the JBSP Legislature Party.

In deciding issue 7, the Speaker took cognizance of his observations given on issue Nos.1 and 5. The Speaker, while deciding issue No.1, had held that the alleged whip dated 20 October 1997 issued by *Sushri* Mayawati was unauthorised and not in accordance with provisions of the Tenth Schedule. While deciding on issue No. 5, the Speaker had also held that the said whip became meaningless and ineffective by *Sushri* Mayawati's oral directions given to MLAs on 21 October 1997. Hence, the respondents cannot be said to have acted contrary to the alleged whip. They, therefore, did not incur disqualification under para 2(1)(b) of the Tenth Schedule. As regards to issue No.7, the Speaker held that for the reasons stated above, and also in view of the findings on issue No.5, the respondent could not be said to have violated the whip dated 20 October 1997 issued by *Sushri* Mayawati. Issue No.7, therefore, was decided accordingly.

Regarding issue No.8, the Speaker held that in view of his findings on issue Nos.1 to 7, the respondents could not be held to have incurred disqualification for being members of the Uttar Pradesh Legislative Assembly. Accordingly, the petitions were dismissed.

In his order, the Speaker *inter alia* held as under:

> "All the 24 petitions filed by *Sushri* Mayawati and Shri R.K. Chaudhary separately but individually, against the 12 respondents are hereby dismissed. The respondents do not suffer from any disqualification under paragraph 2(1) of the Tenth Schedule to the Constitution of India.
>
> Further, the following 19 persons shall be known as members of the Janatantrik Bahujan Samaj Party in the U.P. Legislative Assembly–
>
> 1. Shri Markandeya Chand
> 2. Chaudhary Narendra Singh
> 3. Shri Sardar Singh
> 4. Shri Shivendra Singh
> 5. Shri Prem Prakash Singh

6. Shri Raja Gaznafar Ali Khan
7. Shri Vansh Narayan Singh
8. Shri Radhey Shyam
9. Shri Yashwant Singh
10. Shri Bhagwan Singh Shakya
11. Shri Sukhpal Pandey
12. Shri Ram Asrey Singh Kushwaha
13. Shri Munna Lal Maurya
14. Shri Rajendra Singh Patel
15. Shri Jai Narain Tewari
16. Shri Ved Prakash
17. Shri Shiv Ganesh Lodhi
18. Shri Qasim Hasan
19. Shri Ram Ratan Yadav."

Consequential Action

The Speaker's order was notified in the Assembly Bulletin.

Subsequent Developments

Dissatisfied with the above-mentioned order of the Speaker, *Sushri* Mayawati filed Special Leave Petition No.8113/98 in the Supreme Court of India. The Supreme Court gave their decision on 9 October 1998, which comprised of three separate judgments by Chief Justice, M.M. Punchhi and Justices K.T. Thomas and N. Srinivasan. While Justice K.T. Thomas allowed the Appeal, Justice M. Srinivasan dismissed it. After considerations of the facts and having perused various judicial pronouncements rendered by the judiciary, the Chief Justice, M.M. Punchhi observed that in the Kihota Hollohan Vs Zachilhu Case, the Supreme Court in their majority decision had *inter alia* summed up the nature of functions exercised by the Speaker/ Chairman under para 6(1) but the judgement was silent on the aspect whether cognition by the Speaker/Chairman of the occurrence of split is administrative in nature, unconnected with decision making on disqualification or is an adjunct thereto. He, therefore, held that the role of the Speaker/Chairman, on which there has not been any judicial interpretation so far, needed to be determined, before the matter is examined as to the perversity or otherwise of the Speaker's decision. Chief Justice Punchhi accordingly referred the matter to the Constitution Bench for decision. The Constitution Bench is yet to be constituted to consider the matter.

Hari Kishan Case (UPLA, 1997)

Petitions for Disqualification filed against an MLA of Bahujan Samaj Party for alleged violation of whip under para 2(1)(b) of Tenth Schedule – Subsequently, petitioners sought permission for amendment in petitions to add additional ground under para (2) (1) (a) against respondent – Amendment not allowed – Petitioners contended: respondent refused to receive hand delivered copy of whip; abstained from voting and thereby violated whip – Respondent contended that as he was not available in Lucknow, there was no question of receiving copy of whip; produced air ticket in original to substantiate the fact that he was out of Lucknow – Respondent resigned before start of evidence – Speaker nevertheless proceeded to consider matter on merits; held that petitioners failed to ensure receipt of whip by respondents; whip was not violated – Accordingly, petitions dismissed.

Facts of the Case

On 24 October 1997, *Sushri* Mayawati, the Leader of the Bahujan Samaj Party (BSP) filed a petition against Shri Hari Kishan, MLA, under para 2(1)(b) of the Tenth Schedule to the Constitution for having defied whip issued by the BSP Legislature Party. It was, *inter alia*, prayed in the petition that the respondent, by his act of defiance of the whip, was liable to be disqualified for being member of the Assembly under Article 191(2) of the Constitution of India and its Tenth Schedule read with the Members of the Uttar Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1987 (hereinafter referred to as Assembly Anti-defection Rules, 1987).

The petitioner *inter alia* averred that she and the respondent were elected on the ticket of the BSP, which had 67 MLAs in the Assembly. On 20 October 1997, she issued a whip to oppose a Confidence Motion moved by the BJP Government led by Shri Kalyan Singh. *Sarvashri* R.K. Chaudhary and Sukhdev Rajbhar, both BSP MLAs, personally handed over a copy of the whip to the respondent, who after reading it refused to receive the same. Later, the respondent abstained from the voting held on the Confidence Motion on 21 October 1997 and thereby violated

the aforesaid whip dated 20 October 1997.

The petitioner further stated that the respondent act of violating the whip had not been condoned and thus he was liable to be disqualified for being member of the Assembly in terms of para 2(1)(b) of the Tenth Schedule.

Prior to issue of notice, Shri Hari Kishan submitted an application/representation dated 1 November 1997 to the Speaker, denying various facts in the petition. The respondent also requested for dismissal of the same and issue of orders for lodging FIR against *Sushri* Mayawati for furnishing wrong facts.

Having found the petition in order, the Speaker caused notice to be issued to the respondent for his comments. On 6 November 1997, the respondent filed an affidavit, *inter alia* stating that as he was not in Lucknow on 20 October 1997 there was no question of his receiving the whip on that day. On 8 November 1997, the petitioner filed a counter affidavit, reitereting earlier statements. An affidavit of *Sarvashri* R.K. Chaudhary and Sukhdev Rajbhar dated 7 November 1997 was also enclosed with the counter affidavit.

Meanwhile, on 11 November 1997, Shri R.K. Chaudhary, MLA belonging to the BSP, also filed a separate petition against Shri Hari Kishan in which he reiterated the facts stated in *Sushri* Mayawati's petition. Shri Chaudhary also prayed to declare the respondent disqualified for having defied the whip issued by his original political party. A copy of this petition was also sent to the respondent for his comments.

In the course of proceedings, the petitioners, *Sushri* Mayawati and Shri R.K. Chaudhary, sought permission for amendment in their petitions. The proposed amendment intended to add an alternative plea seeking respondent's disqualification in terms of provisions of para 2(1)(a). The request was, however, rejected by the Speaker. The Speaker fixed hearing on 27 November 1997. Meanwhile, the respondent produced ticket of the Sahara Airlines in original to substantiate his contention that since he was out of Lucknow, there was no question of his receiving the whip. As requested by the respondent, the newspaper clippings produced in the Vansh Narayan Singh and others Case were considered as produced. Meanwhile, the date of hearing was postponed to 2 February 1998.

On 25 January 1998, the respondent, Shri Hari Kishan, resigned from the membership of the Assembly and his resignation was accepted on the same day. When the petitions were presented before the Speaker for consideration, a question arose as to whether the petition had become infructuous. On 9 February 1998, *Sushri* Mayawati gave an application intimating that since the petition had become infructuous, she did not wish to press her petition and desired to withdraw it. No

such application was, made by the second petitioner, Shri R.K. Chaudhary. The Speaker, however, proceeded to consider the matter on merits.

After consideration of the facts and circumstances of the case, the following issues were set for examinations:

(i)1. (a) Whether as stated in para 4 of the petition the whip/direction dated 20 October 1997 was served on the respondent on 20 October 1997 at his Lucknow residence?

(b) Whether according to the Constitution the service of the said whip/ direction on the respondent was essential or whether the respondent had its knowledge?

(c) Whether as stated by the respondent the petitioner had prepared fake documents to show service of the said whip/petition on the respondent?

(ii) Whether the respondent, Shri Hari Kishan, violated the aforesaid whip/ direction dated 20 October 1997 by abstaining from casting his vote against the Motion moved by the Chief Minister, Shri Kalyan Singh, in the sitting of the Uttar Pradesh Legislative Assembly on 21 October 1997 as was stated in the petition?

(iii) Whether the petitioner changed his whip/direction dated 20 October 1997 from time to time as was stated by the respondent in paras 5(a) and 6 of his affidavit dated 12 November 1997?

(iv) Whether under para 2(1) (b) of the Tenth Schedule of the Constitution of India, the respondent was liable to be disqualified from the membership of the Uttar Pradesh Legislative Assembly?

(v) Whether the petitioner was entitled to get any relief?

Decision of the Speaker

Having considered various facts and points raised in the petition, affidavits and oral evidence during the hearings, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 25 February 1998 under the Tenth Schedule in the matter. Regarding the point that whether the petitions had become infructuous, the Speaker held that there was no need to go into this question as he had clarified it during the course of the hearings that the case would be decided on its merit.

Regarding issues set for consideration, the Speaker held that issues at (i) (a), (b), (c) and (ii) were the only main issues for consideration. Issues No.iii, iv and v were ancillary and pertained to seeking of relief. It was, therefore, appropriate to decide upon issues (i) (a), (b), (c) and (ii) together. Discussing (i) (a, b and c) and (ii), the Speaker observed that the statement made in para 4 of the petition regarding

receipt of whip/notice dated 20 October 1997 by the respondent on 20 October 1997 was not credible *prima facie*. It was essential for the petitioner to ensure the receipt of the whip by respondent before making it binding on him. The respondent had no knowledge of the said whip prior to voting. Thus, the respondent had not violated the aforesaid whip in any way. The information of delivery of the above whip/notice on 20 October 1997 by petitioner to the respondents as mentioned in the present petitions, *prima facie*, therefore, did not seem to be correct. These issues were, therefore, answered in negative.

Insofar as issue No.(iii) was concerned, the Speaker held that as the respondent did not stress on this point, it was not necessary to give any decision in that regard. Otherwise also, in view of the decision given in regard to issues (i) (a) (b) (c) and (ii), it was not necessary to deliver judgement on issue No. (iii) separately. Thus, issue (iii) became meaningless. Regarding issue (iv), the Speaker observed that it was clear from the decision given on issues (i) (a) (b) (c) and (ii) that respondent did not invite any disqualification for the membership of Uttar Pradesh Legislative Assembly under para 2(1) (b) of the Tenth Schedule to the Constitution of India. Accordingly, this issue was answered in negative. Deciding issue No. (v), the Speaker opined that in view of the decision given in regard to issues (i) (a) (b) (c) and (ii), petitioners did not deserve any relief. Hence, these petitions were liable to be dismissed. He further stated that he had taken cognizance of the fact that respondent had resigned from the membership of Legislative Assembly on 25 January 1998, which was accepted the same day. The petitioners did not, therefore, deserve to get any relief on that basis also.

Delivering his decision, the Speaker held as under:

> From the above analysis of the case, it is clear that the petitions submitted separately by *Sushri* Mayawati and Shri R.K. Chaudhary against the respondent, Shri Hari Kishan, are liable to be dismissed and same are hereby dismissed.
>
> The original ticket of Airlines which was submitted by Shri Hari Kishan as an evidence, may be returned to him in original.

Consequential Action

The Speaker's order was published in the Assembly Bulletin.

Bharatiya Kisan Kamgar Party Merger Case (UPLA, 1999)

Claim for merger by all the 8 members of Bharatiya Kisan Kamgar Party with Lok Dal – All the 8 claimants of the merger confirmed facts regarding merger – Also confirmed by President, Lok Dal – Merger allowed in terms of para 4 of Tenth Schedule – Members treated accordingly.

Facts of the Case

The Bharatiya Kisan Kamgar Party (BKKP) had a strength of eight MLAs in the Thirteenth Uttar Pradesh Legislative Assembly. On 23 January 1999, all the eight members *viz.* Sarvashri Kokab Hameed, Samar Pal Singh, Gajendra Kumar Munna, Virendra Singh, Rajpal Singh, Vijendra Arya, Parvej Halim Khan and Banarasi Das Chandana, MLAs belonging to the BKKP met the Speaker and handed over a letter intimating that their Party had merged with the Lok Dal led by Shri Ajit Singh. They requested the Speaker to recognise the merger. Shri Ajit Singh, National President, Lok Dal and Shri Sachchidanand Gupta, State General-Secretary of the Lok Dal also conveyed their acceptance of the merger *vide* their letters dated 12 February 1999 and 6 February 1999, respectively. Besides, the above-mentioned MLAs also appeared before the Speaker on 16 and 17 March 1999 and confirmed the facts regarding the merger.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision under the Tenth Schedule on 17 March 1999 . The Speaker in his decision while noting that the BKKP Legislature Party had eight members in the House and as all the members of the merging Party confirmed the fact regarding merger of the BKKP with the Lok Dal, held that the claim for merger fulfilled the requirement for a valid merger stipulated in para 4 of the Tenth Schedule to the Constitution of India. Accordingly, the Speaker allowed the merger. The said members were treated as belonging to Lok Dal in the Assembly.

Janata Dal (Raja Ram Pandey) Merger Case (UPLA, 2000)

Claim of merger by all the 3 members of Janata Dal (Raja Ram Pandey) with Jana Shakti Party – Confirmed by Party being merged with – Merger allowed in terms of para 4 of Tenth Schedule – Members treated – accordingly Subsequent request for change of name of party from Jana Shakti Party to Lok Jana Shakti Party – Allowed.

Facts of the Case

On 4 December 2000, the Janata Dal (Raja Ram Pandey) or the JD (RRP) Legislature Party had three members in the Thirteenth Uttar Pradesh Legislative Assembly. On 4 December 2000, Shri Raja Ram Pandey, the Leader of the JD (RRP) Legislature Party, submitted a letter to the Speaker intimating that his original Party had merged with the Jana Shakti Party. He requested the Speaker to allow the merger. Shri Pandey further intimated that Shri Ram Vilas Paswan, the All India President of the Jana Shakti Party, had also accepted the merger.

On 4 December 2000, two members of the JD (RRP) Shri Raja Ram Pandey and Shri Ram Pal Rajvanshi, met the Speaker and confirmed the facts regarding the merger. They also informed the Speaker that the third MLA, Shri Ram Asrey Paswan, was not well and that he would confirm the facts after recovery from illness.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 4 December 2000 under the Tenth Schedule in the matter. The Speaker found that the merger fulfilled the conditions stipulated under para 4 of the Tenth Schedule. Accordingly, he recognised the merger. Simultaneously, the Speaker also recognised the existence of the Jana Shakti Legislature Party in place of the JD(RRP) Legislature Party in the House with Shri Raja Ram Pandey as its Leader.

Subsequent Developments

Subsequently, Shri Raja Ram Pandey, *vide* his letter dated 23 January 2001 addressed to the Speaker, requested that as the name of the Jana Shakti Party had been changed to the Lok Jana Shakti Party, necessary changes in the Assembly records might be made. A similar request was made by *Sushri* Chitra Singh, National General Secretary of the Lok Jana Shakti Party. The third member of the erstwhile JD (RRP), Shri Ram Asrey Paswan, personally gave a letter to the Speaker intimating his consent to their merger. The Speaker, in his order dated 5 February 2001, allowed both the change of the name and the request of Shri Ram Asrey Paswan.

Janatantrik Bahujan Samaj Party Split Case (UPLA, 2001)

Claim for split in Janatantrik Bahujan Samaj Party made by 13 members out of the total 19 members – Of the 13 member, 7 members personally appeared before the Speaker and confirmed facts – With regard to other 6 members it was stated that they could not appear in person due to personal reasons – Splitaway Group claimed formation of a new party by the name Janatantrik Bahujan Samaj Party (Markandeya Chand) or JBSP (MC) – Split taken cognizance of in terms of para 3 of Tenth Schedule – Initially JBSP (MC) with strength of seven members came into being – Thereafter of the 6 members who could not personally appear before Speaker earlier, 4 members appeared before Speaker and confirmed facts and 1 member who had earlier appeared before the Speaker, withdrew his claim for split – Speaker *vide* his subsequent order held that JBSP (MC) had a strength of 10 members – JBSP (MC) claimed merger with Lok Jana Shakti Party – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule – Members treated accordingly.

Facts of the Case

The Janatantrik Bahujan Samaj Party had a strength of 19 MLAs in the Thirteenth Uttar Pradesh Legislative Assembly. On 22 February 2001, Shri Markandeya Chand, Leader of the Janatantrik Bahujan Samaj Legislature Party (JBSP), along with six other MLAs* met the Speaker and handed over a letter to him intimating that there was a split in their party at the State and the Legislature levels and as a result of which they had formed a new Party, *i.e.* the Janatantrik Bahujan Samaj Party (Markandeya Chand) or the JBSP (MC). The letter bore signatures of 13 MLAs, out of whom, only the above-mentioned seven MLAs confirmed in person the facts regarding the split before the Speaker. As regards the remaining six MLAs, it was stated that they could not appear due to

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* Dr. Ram Asrey Singh Kushwaha, *Sarvashri* Raja Gajanfar Ali Khan, Yashwant Singh, Rajendra Singh Patel, Ram Ratan Yadav and Shiv Ganesh Lodhi.

some personal reasons and they would confirm the facts in person before the Speaker.

Decision of the Speaker

After examining the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 22 February 2001 under the Tenth Schedule. There were 19 MLAs of the JBSP in the Assembly. The Speaker in his decision noted that out of 19 MLAs of JBSP, 13 MLAs had signed the letter claiming the said split and their number was more than one-third of the total strength of the undivided JBSP. The Speaker further noted that even the seven MLAs who personally appeared before him constituted the required one-third of the strength of the undivided JBSP. The Speaker, therefore, held that the split was valid under the provisions stipulated under para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Thereafter, on 23 February 2001, Shri Shivendra Singh, MLA who could not appear on 22 February 2001, met the Speaker and confirmed the facts regarding split. Similarly, *Sarvashri* Qasim Hasan, Sukhpal Pandey and Radhey Shyam Kori, also MLAs of JBSP(MC), confirmed the facts before the Speaker. But, one of the MLAs, Shri Ram Ratan Yadav, who had earlier expressed his support to the JBSP(MC) during his meeting with the Speaker on 22 February 2001, desired to withdraw his earlier claim for split. The Speaker, therefore, concluded that there were only ten members* in the JBSP (MC). The Speaker *vide* his order dated 4 March 2001 held that JBSP(MC) comprised of 10 members.

Meanwhile, Shri Markandeya Chand *vide* his letter dated 24 February 2001, intimated the Speaker that their Party, *i.e.* the JBSP(MC), had merged with the Lok Jana Shakti Party. Stating that the National President of the Lok Jana Shakti Party, Shri Ram Vilas Paswan, had also given his consent for the merger, he requested the Speaker to allow the merger. Shri Markandeya Chand also enclosed another letter containing details of a meeting of the JBSP(MC) dated 23 February 2001 wherein the merger was approved. Though the letter bore signatures of 13 MLAs, three of the signatories *viz. Sarvashri* Bhagwan Singh Shakya, Munna Lal Maurya and Ram Ratan Yadav - whose names were not included in the list of members

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* *Sarvashri* Markandeya Chand, Dr. Ram Asrey Singh Kushwaha, Raja Gajanfar Ali Khan, Rajendra Singh Patel, Shivendra Singh, Yaswant Singh, Radhay Shyam Kori, Qasim Hasan, Sukhpal Pandey and Shiv Ganesh Lodhi.

identified by Speaker at the time of taking cognizance of formation of JBSP (MC) – did not confirm the facts. So, the merger had support of 10 members. After taking into account of the provisions of para 4 of the Tenth Schedule, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 4 March 2001 under the Tenth Schedule in the matter. He found that the merger fulfilled provisions stipulated under para 4 of the Tenth Schedule. Accordingly the merger was allowed and the 10 members were treated as belonging to the Lok Jana Shakti Party.

Lok Jana Shakti Party Split Case (UPLA, 2002)

Claim for split in Lok Jana Shakti Party by lone member – Splitaway Group formed new party by the name of Lok Jana Shakti Party (Raja Ram Pandey) – Valid in terms of para 3 of Tenth Schedule – Taken cognizance of – New Party, *i.e.* Lok Jana Shakti Party (Raja Ram Pandey) merged with Samata Party – Valid in terms of para 4 of Tenth Schedule – Allowed.

Facts of the Case

Shri Raja Ram Pandey, the lone MLA of the Lok Jana Shakti Party, intimated the Speaker *vide* his letter dated 3 May 2002 that consequent upon a split in his party he had formed a new party by the name of the Lok Jana Shakti Party (Raja Ram Pandey). He requested the Speaker to recognize the new party.

Decision of the Speaker

On consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 26 August 2002 in the matter. As Shri Pandey was the lone MLA of the Lok Jana Shakti Party, the split fulfilled requirements of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on 7 October 2002, Shri Rajaram Pandey intimated the Speaker that his newly formed party, *i.e.* the Lok Jana Shakti Party (Raja Ram Pandey), had merged with the Samata Party. Shri Ram Asre Verma, State President of Samata Party, intimated the Speaker *vide* his letter dated 7 October 2002, that Shri George Fernandes, National President, had given his consent to the merger. As the merger fulfilled requirements of para 4 of the Tenth Schedule, the Speaker allowed the same on 8 October 2002.

Janata Dal (U) Split Case (UPLA, 2002)

Claim for split in Janata Dal (U) by 1 out of the total 2 MLAs – New Party by the name of Manjhi Majhwar Shoshit Dal formed – Split valid in terms of para 3 of Tenth Schedule – Taken Cognizance of – Member treated accordingly.

Facts of the Case

The Janata Dal (U) [JD(U)] Legislature Party had two MLAs in the Fourteenth Legislative Assembly. On 26 November 2002, one MLA, Shri Shankhlal Manji, intimated the Speaker *vide* his letter dated 26 November 2002 that his original Party, *i.e.* the JD(U), had split and as a result a new party by the name of the Manjhi Majhwar Shoshit Dal (MMSD) had been formed by him. He requested the Speaker to take cognizance of the split.

Decision of the Speaker

On consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 18 December 2002 in the matter. As one out of the total two MLAs of the JD(U) Legislature Party claimed split, the split fulfilled requirements for a valid split as laid down in para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Akhil Bharatiya Congress Merger Case (UPLA, 2003)

Claim of merger of Akhil Bharatiya Congress with Bahujan Samaj Party – by 3 out of the total 4 members – Confirmed by Party being merged with – Merger allowed in terms of para 4 of Tenth Schedule.

Facts of the Case

Consequent upon a split in the Indian National Congress, the Speaker on 28 January 2003, had recognised the formation of the Akhil Bharatiya Congress Legislature Party which comprised of eight MLAs. Later, there was a split in the Akhil Bharatiya Congress Legislature Party on 3 February 2003 and as a result thereof a Group consisting of four members, namely, *Sarvashri* Shyam Narayan Tewari, Kameswar Upadhyay, Virendra Singh Bundela and Nawab Qazim Ali Khan formed a new Party, *i.e.* the Ekta Party. Thus, on 6 February 2003, the Akhil Bharatiya Congress Legislature Party had only 4 members.

On 6 February 2003, *Sarvashri* Rajpal Tyagi, Dinesh Singh and Vinod Kumar Yadav 'Kakka', MLAs belonging to the Akhil Bharatiya Congress Legislature Party, met the Speaker and gave a letter to him. In the letter it was *inter alia* stated that the Akhil Bharatiya Congress Legislature Party, following a decision taken at an emergency meeting of the Party on 5 February 2003 which was attended by the aforesaid three MLAs [the fourth MLA, Shri Akhilesh Singh, who was not present, had merged with the Bahujan Samaj Party (BSP)]. Out of the four members of the Akhil Bharatiya Congress Party in the House, above-mentioned three members confirmed the fact of the merger before the Speaker and requested him to recognise the merger.

Decision of the Speaker

After considering the facts and circumstances of the case in the light of the provisions of the Tenth Schedule, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 6 February 2003. The Speaker arrived at the conclusion that the merger fulfilled requirements of para 4 of the Tenth Schedule. Accordingly, he allowed the merger.

Indian National Congress Split Case (UPLA, 2003)

Claim for split by 8 out of total 24 MLAs of Indian National Congress (INC) – Splitaway Group formed New Party by the name of Akhil Bharatiya Congress; claimed that more MLAs were interested in joining new party – One of 8 members was earlier expelled from INC – Speaker held: Split was valid; expellee belonged to original party and was eligible for being party to split; 8 members who confirmed facts regarding split would be considered belonging to new party – Split taken cognizance of – Eight members who claimed split were recognised as belonging to Akhil Bharatiya Congress.

Facts of the Case

The Indian National Congress (INC) had 24 MLAs in the Fourteenth Uttar Pradesh Legislative Assembly. On 28 January 2003, *Sarvashri* Dinesh Singh, Shyam Narayan, Kameshwar Upadhyaya, Vinod Kumar Yadav 'Kakka', Virendra Singh Bundela, Nawab Kazim Ali Khan, Rajpal Tyagi and Akhilesh Kumar Singh, all MLAs, handed over a communication to the Speaker, intimating that a split had occurred in the INC and as a result they had formed a new party by the name of the Akhil Bharatiya Congress. They requested the Speaker to recognize the splitaway Group.

One of the above-mentioned eight MLAs, Shri Akhilesh Kumar Singh, was earlier expelled from the INC and was recognized as an unattached MLA. Referring to judicial decisions, the Speaker held that the expellee, Shri Akhilesh Kumar Singh, was technically a member of the INC and was eligible for claiming split alongwith seven other MLAs.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 28 January 2003 under the Tenth Schedule in the matter. As eight out of the total 24 MLAs constituted one-third of the total membership of the original INC Legislature party, the split was found valid in terms of provisions of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Janata Dal (U) Merger Case (UPLA, 2003)

Claim of merger by the lone MLA of Janata Dal (U) with Samajwadi Party – Found valid in terms of para 4 of Tenth Schedule – Merger allowed – Member treated accordingly.

Facts of the Case

Shri Ajeet Kumar *alias* Raju, the lone MLA of the Janata Dal (U) or the JD (U), intimated the Speaker that his party had decided to merge with the Samajwadi Party. He, therefore, requested the Speaker to recognize the merger and treat him as an MLA belonging to the Samajwadi Party. Shri Mulayam Singh Yadav, Leader of the Samajwadi Party (Legislature Party) also gave his consent to the merger.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 2 September 2003 under the Tenth Schedule in the matter. As Shri Ajeet Kumar *alias* Raju was the lone MLA of the JD (U), the merger fulfilled requirements under para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Akhil Bharatiya Congress Party Split Case (UPLA, 2003)

Claim for split in Akhil Bharatiya Congress by 4 out of the total 8 MLAs – Splitaway Group of 4 formed a new party by the name of Ekta Party – Taken cognizance of in terms of para 3 of Tenth Schedule – Ekta Party claimed merger with Bahujan Samaj Party – Confirmed by party being merged with – Merger allowed in terms of para 4 of Tenth Schedule – Members treated accordingly.

Facts of the Case

In the Fourteenth Uttar Pradesh Legislative Assembly, the Akhil Bharatiya Congress Party had a strength of eight members. On 3 February 2003, *Sarvashri* Shyam Narayan Tewari, Kameshwar Upadhyay, Nawab Kazim Ali Khan and Virendra Singh Bundela, MLAs belonging to the Akhil Bharatiya Congress Party, met the Speaker and handed over a letter to him intimating that there had been a split in their original Party and as a result they had formed a new Party by the name of the Ekta Party. It was further stated in the letter that four out of the total eight members of the Akhil Bharatiya Congress Party supported the formation of the new Party. They requested the Speaker to take cognizance of the split and formation of the new party.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 3 February 2003, under the Tenth Schedule. The Speaker held that as the splitaway Party had support of more than one-third members of the undivided Party, the claim for split fulfilled the requirements of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split and formation of the new Party.

Subsequent Developments

Subsequently, on the same day *i.e.* 3 February 2003, the above-mentioned MLAs again met the Speaker and gave a letter to him intimating that the Ekta Party had merged with the Bahujan Samaj Party (BSP). In the letter, it was *inter alia*

stated that since all the 4 members of the Ekta Party supported the merger, the merger be recognised and they be considered as members of the BSP Legislature Party.

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 3 February 2003 under the Tenth Schedule. He held that the merger was valid as per provisions of para 4(1) of the Tenth Schedule to the Constitution of India. Accordingly, he allowed the merger.

Rashtriya Parivartan Dal Split Case (UPLA, 2003)

Claim for split in Rashtriya Parivartan Dal political party – Lone member of party intimated about formation of new party by the name Rashtriya Alpasankhyak Party as a result of split which he claimed to represent in the House – Taken cognizance of in terms of para 3 of Tenth Schedule – New party merged with Bahujan Samaj Party – Confirmed by party being merged with – Merger allowed in term of para 4 of Tenth Schedule – Member treated accordingly.

Facts of the Case

Shri Mehboob Ali was the lone member of the Rashtriya Parivartan Dal in the Fourteenth Uttar Pradesh Legislative Assembly. He informed vide his letter dated 11 February 2003 that as per a resolution passed in their Party meeting dated 7 February 2003 there was a split in the Rashtriya Parivartan Dal. He further informed that as a result of the split, a new Party had been formed in the name of the Rashtriya Alpasankhyak Party, which he represented in the House. He requested the Speaker to take cognizance of the new Party and treat him as member belonging to that party and allot separate seat to him.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision in the matter on 11 February 2003, under the Tenth Schedule. As Shri Mehboob Ali was the lone member, the split fulfilled the requirements of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on the same day, Shri Mehboob Ali, MLA intimated that as per a resolution passed in the Party meeting, the Rashtriya Alpasankhyak Party had merged with the Bahujan Samaj Party. Kumari Mayawati, the Leader, Bahujan Samaj Party confirmed the merger. After examination of the facts, the Speaker found the merger was valid in terms of the provisions of para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger *vide* his order dated 11 February 2003.

Apna Dal Split Case-I (UPLA, 2003)

Claim for split by 2 out of total 3 MLAs of Apna Dal – Splitaway Group formed Vastavik Apna Dal – Found valid in terms of para 3 of Tenth Schedule – Taken cognizance of – Later Vastavik Apna Dal merged with Bahujan Samaj Party – Found valid in terms of para 4 of Tenth Schedule – Allowed.

Facts of the Case

The Apna Dal Legislature Party had three MLAs in the Fourteenth Uttar Pradesh Legislative Assembly. On 29 March 2003, *Sarvashri* Surendra Singh Patel and Ansar Ahmad, both MLAs belonging to the Apna Dal, appeared before the Speaker and handed over a communication to the Speaker, stating that as per a decision taken in their Party meeting on 29 March 2003 a split had occurred in the Apna Dal. They further intimated that as a result of split, a new party by the name of Vastavik Apna Dal was formed. They requested the Speaker to take cognizance of the split.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 2 April 2003 under the Tenth Schedule in the matter. As the strength of the splitaway group, *i.e.* two out of the total three, was more than one-third of the strength of the original party, the split fulfilled requirements for a valid split as laid down in para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on the same day, the above-mentioned two MLAs again appeared before the Speaker and gave a communication to the Speaker, stating that their party, *i.e.* the Vastavik Apna Dal, had merged with the Bahujan Samaj Party. As both the MLAs confirmed facts regarding merger, the Speaker, Shri Keshari Nath Tripathi, found the claim for merger valid in terms of para 4 of the Tenth Schedule and accordingly allowed the merger *vide* his decision dated 2 April 2003.

Manjhi Majhwar Shoshit Dal Merger Case (UPLA, 2003)

Claim of merger by lone MLA of Manjhi Majhwar Shoshit Dal with Samajwadi Party – Merger valid in terms of para 4 of Tenth Schedule – Merger taken cognizance of – Member treated accordingly.

Facts of the Case

Shri Shankhalal Manjhi, the lone MLA of the Manjhi Majhwar Shoshit Dal (MMSD), intimated the Speaker *vide* his letter dated 1 September 2003 that his party had merged with the Samajwadi Party. He, therefore, requested the Speaker to recognize the merger. Shri Mulayam Singh Yadav, Leader of the Samajwadi Legislature Party, also gave his consent to the merger.

Decision of the Speaker

On consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 2 September 2003 under the Tenth Schedule in the matter. As Shri Manjhi was the lone MLA of the MMSD, the merger fulfilled requirements for a valid merger as laid down in para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Janata Party Split Case (UPLA, 2003)

Claim for split in Janata Party by lone member of the Legislature Party – New party by the name of Ekta Party formed – Split valid in terms of para 3 of the Tenth Schedule – Taken Cognizance of – Member treated accordingly – Subsequently splitaway Group, *i.e.*, Ekta Party merged with Samajwadi Party –Merger valid in terms of para 4 of Tenth Schedule – Allowed.

Facts of the Case

Shri Sanjay Garg was the lone MLA of the Janata Party in the Fourteenth Uttar Pradesh Legislative Assembly. He informed the Speaker *vide* his letter dated 3 September 2003 that as per a resolution passed in the Party meeting held on 26 August 2003 a split had occurred in the Janata Party and as a result a new Party by the name of the Ekta Party had come into being. He requested the Speaker to take cognizance of the split.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 5 September 2003 under the Tenth Schedule in the matter. As Shri Garg was the lone MLA of the Janata Party, the split fulfilled requirements for a valid split as laid down in para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on the same day, Shri Sanjay Garg informed the Speaker that his Party, *i.e.* the Ekta Party, had merged with the Samajwadi Party on 3 September 2003. He requested the Speaker to allow the merger. Shri Mulayam Singh Yadav, Leader, Samajwadi Party, also gave his consent for merger of the Ekta Party with his Party. After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 9 September 2003 in the matter. As Shri Garg was the lone MLA of the Ekta Party, the merger fulfilled requirements for a valid merger as laid down in para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Bahujan Samaj Party Split Case (UPLA, 2003)

Claim for split in Bahujan Samaj Party (BSP) by 37 out of total 109 members – Splitaway Group formed new party by the name of Loktantrik Bahujan Dal (LBD) – BSP Leaders, who were heard by Speaker, contended as split in the Legislature party was not preceded by split in the political party, split was not valid; Election Commission is the sole authority to decide split in Political Party, and Speaker should not decide split in Legislature Party before Election Commission's decision; as splitaway Group did not have requisite one-third strength at the time of split, split was not valid – Speaker in his decision held: Tenth Schedule is related to members of the House only; Election Commission had no role in the instant case; as splitaway Group had one-third strength, split was valid in terms of para 3 of Tenth Schedule – Taken cognizance of – Splitaway Group merged with Samajwadi Party – Valid in terms of para 4 of Tenth Schedule – Allowed.

Facts of the Case

The Bahujan Samaj Party had 109 MLAs in the Fourteenth Uttar Pradesh Legislative Assembly. On 6 September 2003, 37 MLAs* gave an application to the Speaker, intimating that as per a decision taken in the BSP meeting at Dar-ul-Safa, a split had occurred in their Party. They also informed that as a result of the split they had formed a new Party by the name of the Loktantrik Bahujan Dal. They requested the Speaker to take cognizance of the split and recognize the splitaway Group.

Prior to this, on 5 September 2003, Shri Swami Prasad Maurya, Leader of the BSP Legislature Party, handed over an application to the Speaker. In his application Shri Maurya contended that 13 MLAs of his Party had become liable for

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* *Sarvashri* Yogesh Pratap Singh, Rajendra Singh Rana, Shailendra Yadav'Lalai', Rajendra Singh Chauhan, Virendra Singh, Jai Prakash Yadav, Jaiveer Singh, Surendra Vikram Singh, Vinod Kumar Singh, Jung Bahadur Singh, Ram Swarup Singh, Virendra Singh 'Bundela', Raj Kishore Singh, Rajpal Tyagi, Uma Kiran, Mehboob Ali, Nawab Qazim Ali Khan, Kutubu-din Ansari, Dinesh Singh, Kameshwar Upadhyay, Natthu Singh, Ram Bhual Nishad, Ata-ur-Rahman, Vinod Kumar, Ansar Ahmed, Md Bashir, Fasiha Murad Lari (Ch. Gajala), Ram Krishna, Haji Yakub, Vimla Krishna Aggrawal, Dharmendra Kumar Kashyap, Md. Shafir, Uday Bhan Singh, Shyam Narayan, Amarmani Tripathi, Kunwar Brijendra Pratap Singh Advocate, Matesh Chandra Sonkar.

disqualification and a petition for their disqualification was pending before the Speaker. He also submitted that as per the Tenth Schedule, split in the Legislature Party should always be preceded by a split in the political party. Stating that no split had occurred in the BSP political party at any level, he requested the Speaker that in case any claim for split by the 13 MLAs or any other MLA is made, he should be given a hearing. In a separate communication, Shri Maurya submitted that the members, whose names and signatures are mentioned as a separate Group, should be asked to confirm the facts personally.

All the 37 MLAs personally met the Speaker and confirmed facts about the split. The Speaker heard Shri Barkhuram Verma, State President of the BSP and Shri Swami Prasad Maurya, Leader of the BSP Legislature Party. Similarly, he also gave a hearing to Shri Ambika Chaudhary, MLA, who appeared on behalf of the respondents.

During the hearing, *Sarvashri* Verma and Maurya *inter alia* pleaded that split in the original political party was the pre-requisite of split in the Legislature Party. As regards split in the original political party, they pleaded, it is the prerogative of the Election Commission to decide whether a split had occurred in the original party. They also averred that on 26 August 2003, when the split allegedly took place, the number of MLAs claiming split was less than one-third of the total membership of the original party. The split was, therefore, not valid.

Shri Ambika Chaudhary, who appeared on behalf of the petitioners, *inter alia* stated that the question of split in the political party is outside the determinable purview of Legislatures. The Speaker has to only decide whether the claim of split is in accordance with the provisions of para 3 or not. He further stated that 37 out of the total 109 MLAs had claimed a split in the original party. Since the splitaway Group constituted one-third of the original party, the split was valid.

On a close scrutiny of the chain of events in the case, the Speaker determined the following issues for consideration and decision:

(i) Whether the Speaker is required to determine as to whether split has occurred in the political party or his powers are limited to decide upon a claim for split in the legislature party?

(ii) Whether it is for the Election Commission of India to determine whether there has been a split in the political party and whether the Speaker should not recognize a splitaway Group in the legislature Party before the Election Commission of India gives its decision?

(iii) Whether at the time of split, the number of MLAs claiming split was one-third of the original party?

(iv) What is the impact of petition against 13 MLAs filed by Shri Swami Prasad Maurya on the instant case?

(v) Was the split in the BSP Legislature Party valid?

Decision of the Speaker

Considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 6 September 2003 in the matter. Regarding issue (i) the Speaker *inter alia* opined that the Tenth Schedule is related to the members of the House only. He did not accept the plea that split in the Legislature Party should always be preceded by the split in the political party and accordingly decided the issue. The Speaker further opined that the Election Commission had no role in the instant case. As the case pertained to split under para 3 of the Tenth Schedule, the Speaker was competent to decide the issue. Issue no. 2 was, therefore, decided in negative. As regards issue no. 3, the Speaker held that when the members of the House claim split under paragraph 3 of the Tenth Schedule, their strength should be one-third of the total number of the legislature party. In the instant case, since the splitaway Group consisted of one-third of the strength of the BSP, the split was valid. As far as the question of petition regarding 13 MLAs was concerned, the Speaker stated that he would take decision on the petition in the due course. The Speaker accordingly took cognizance of the split.

Meanwhile, Shri Rajendra Singh Rana, the Leader of the splitaway Group, gave a communication to the Speaker, stating that six more MLAs had joined the Loktantrik Bahujan Dal on 6 September 2003. The Speaker, however, declined to accept the request till confirmation of the facts by these six MLAs.

Subsequent Developments

Later, the above-mentioned MLAs led by Shri Rajendra Singh Rana *vide* their communication dated 6 September 2003 intimated the Speaker that their newly formed party, *i.e.* the Loktantrik Bahujan Dal, had merged with the Samajwadi Party. They requested the Speaker to recognize the split. Shri Mulayam Singh Yadav, President of the Samajwadi Party, also gave his consent to the merger. As the facts regarding merger were confirmed by all the 37 MLAs of the merging party, the merger fulfilled requirements of para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Samata Party Split Case (UPLA, 2003)

Claim for split in Samata Party by lone member – New party by the name of Samata Party (Rajaram) formed – Split valid in terms of para 3 of Tenth Schedule – Taken cognizance of – Member treated accordingly – Splitaway Group, *i.e.*, Samata Party (Rajaram) Merged with Samajwadi Party – Merger valid in terms of para 4 of Tenth Schedule – Allowed.

Facts of the Case

Shri Rajaram was the lone MLA of the Samata Party in the Fourteenth Uttar Pradesh Legislative Assembly. He informed the Speaker *vide* his letter dated 15 September 2003 that as per a resolution passed in the Samata Legislature Party at Dar-ul-Shafa on 9 September 2003 a split had occurred in the Party and as a result a new Party by the name of the Samata Party (Rajaram) had come into being. He requested the Speaker to take cognizance of the split.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 17 September 2003 under the Tenth Schedule in the matter. As Shri Rajaram was the lone MLA of the Samata Party in the Assembly, the split fulfilled requirements of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on the same day, Shri Rajaram intimated the Speaker that his newly formed Party, *i.e.* the Samata Party (Rajaram), had merged with the Samajwadi Party. As Shri Rajaram was the lone MLA of the merging Party, the Speaker opined that the merger fulfilled requirements of para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Samajwadi Janata Party (Rashtriya) Split Case (UPLA, 2003)

Claim for split in Samajwadi Janata Party (Rashtriya) by lone member – New Party by the name of Samajwadi Janata Party (Ram Govind) formed – Split valid in terms of para 3 of Tenth Schedule – Taken Cognizance of – Member treated accordingly – Splitaway Party, *i.e.* Samajwadi Janata Party (Ram Govind) merged with Samajwadi Party – Merger valid in terms of Para 4 of Tenth Schedule – Allowed.

Facts of the Case

Shri Ram Govind Chaudhary was the lone MLA of the Samajwadi Janata Party (Rashtriya) in the Fourteenth Legislative Assembly. He informed the Speaker *vide* his letter dated 30 September 2003 that as per a resolution passed in the Party meeting on 25 September 2003 a split had occurred in his original party and as a result a new Party by the name of the Samajwadi Janata Party (Ram Govind) had come into being. He requested the Speaker to take cognizance of the split.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 1 October 2003. As Shri Chaudhary was the lone MLA of the Samajwadi Janata Party (Rashtriya), the split fulfilled requirements of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Later, on the same day, Shri Ram Govind Chaudhary, MLA, intimated the Speaker that his newly formed Party, *i.e.* the Samajwadi Janata Party (Ram Govind) had merged with the Samajwadi Party. As Shri Chaudhary was the lone MLA of the SJP (Ram Govind), the merger met requirements of para 4 of the Tenth Schedule. Accordingly, the Speaker allowed the merger.

Apna Dal Split Case-II (UPLA, 2003)

Claim for split in Apna Dal by the lone member – New Party by the name of Apna Dal (A) formed – Split valid in terms of para 3 of Tenth Schedule – Taken cognizance of – Member treated accordingly – Split away party, *i.e.* Apna Dal (A) merged with Samajwadi Party – Merger valid in terms of para 4 of Tenth Schedule – Merger allowed.

Facts of the Case

Shri Ateek Ahmad was the lone member of the Apna Dal Legislature Party in the Fourteenth Uttar Pradesh Legislative Assembly. He informed the Speaker *vide* his letter dated 4 October 2003 that as per a resolution passed in the Apna Dal meeting on 26 September 2003 a split had occurred in that Party and as a result a new party by the name of the Apna Dal (A) had come into being. Shri Ateek Ahmad confirmed these facts in a personal meeting with the Speaker on 23 October 2003 and telephonically on 24 October 2003. He requested the Speaker to take cognizance of the split and recognise the split-away Group.

Decision of the Speaker

After considering the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 24 October 2003 under the Tenth Schedule in the matter. As Shri Ahmad was the lone MLA of the original political party, *i.e.* the Apna Dal, the split fulfilled requirements of para 3 of the Tenth Schedule. Accordingly, the Speaker took cognizance of the split.

Subsequent Developments

Shri Ateek Ahmad had addressed another letter on the same day, *i.e.* 4 October 2003, intimating that his party had merged with the Samajwadi Party. He requested the Speaker to recognise the merger. Shri Mulayam Singh Yadav, Leader, Samajwadi Party, also gave his consent to the merger. Later, Shri Ateek Ahmad during his meeting with the Speaker on 23 October 2003 had confirmed the fact regarding the merger. As Shri Ahmad was the lone member of the Apna Dal (A) Legislature Party, the Speaker found that the merger fulfilled requirements of para 4 of the Tenth Schedule. Accordingly, he recognised the merger.

National Loktantrik Party Merger Case (UPLA, 2003)

Claim of merger by lone member of National Loktantrik Party with Samajwadi Party – Merger valid in terms of para 4 of Tenth Schedule – Allowed – Member treated accordingly

Facts of the Case

Shri Dinanath Kushwaha was the lone MLA of the National Loktantrik Party in the Fourteenth Uttar Pradesh Legislative Assembly. He intimated *vide* his letter dated 30 October 2003, addressed to the Speaker, that his party had merged with the Samajwadi Party. He requested the Speaker to allow the merger and recognise him as a member belonging to the Samajwadi Party.

Decision of the Speaker

After consideration of the facts and circumstances of the case, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 30 October 2003 in the matter. As the merger fulfilled requirements of para 4 of the Tenth Schedule, the Speaker allowed the same.

Rashtriya Kranti Party Merger Case (UPLA, 2004)

Claim of merger by all 4 members of Rashtriya Kranti Party with Bharatiya Janata Party - Merger valid in terms of para 4 of Tenth Schedule – Allowed – Members treated accordingly.

Facts of the Case

The Rashtriya Kranti Party had four members in the Fourteenth Uttar Pradesh Legislative Assembly. All the four MLAs* handed over a letter dated 20 February 2004 to the Speaker, intimating that their Party had merged with the Bharatiya Janata Party (BJP). Shri Lalji Tondan, Leader, BJP Legislature Party also gave his consent in writing for merger of the two parties.

Decision of the Speaker

After consideration of the facts and circumstances of the case and provisions of para 4 of the Tenth Schedule, the Speaker, Shri Keshari Nath Tripathi, gave his decision dated 23 February 2004 in the matter. As the merger fulfilled requirements under para 4 of the Tenth Schedule, he allowed the same.

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* *Sarvashri* Kalyan Singh, Rajvir Singh, Devendra Pratap and Sunder Singh.

Janata Dal (Samajwadi) Merger Case (UPLC, 1993)

Claim for merger by the lone member of the Janata Dal (Samajwadi) with Bharatiya Janata Party – Valid in terms of para 4 of Tenth Schedule – Allowed – Member treated accordingly.

Facts of the Case

On 23 December 1993, Shri Awadh Kumar Singh Baghi, the lone member of the Janata Dal (Samajwadi) in the Uttar Pradesh Legislative Council, in a communication addressed to the Acting Chairman, intimated that his Party had merged with the Bharatiya Janata Party headed by Shri Lalji Tandon.

Decision of the Acting Chairman

After consideration of the facts and circumstances of the case, Acting Chairman, Shri Nityanand Swami, gave his decision dated 4 March 1994, under the Tenth Schedule in the matter. The Acting Chairman held that the case did not attract provisions of disqualification on ground of defection and it was a valid merger in terms of provisions of the Tenth Schedule. Accordingly, he allowed the merger.

Janata Dal Split Case - I (UPLC, 1994)

Claim for split by 7 out of the total 13 members of Janata Dal – Splitaway Group formed new party by the name of Pragatisheel Janata Dal – Valid in terms of para 3 of Tenth Schedule – Split taken cognizance of – Splitaway Group, *i.e.* Pragatisheel Janata Dal claimed merger with Indian National Congress – Valid in terms of para 4 of Tenth Schedule – Merger allowed.

Facts of the Case

On 3 March 1994, the Janata Dal Legislature Party had 13 members in the Uttar Pradesh Legislative Council. On 3 March 1994, *Sarvashri* Jagat Singh, Anurag Shukla, Samar Pal Singh, Kashi Ram, Radhey Shyam Patel, Jagdish Singh and Balbir Singh Debthua, MLCs belonging to the Janata Dal Legislature Party, met the Acting Chairman and handed over a letter to him intimating that there was a split in their original Party and as a result they had formed a new Party by the name of the Pragatisheel Janata Dal with Shri Jagat Singh as its Leader. They requested the Acting Chairman to take a cognizance of the split and formation of the new Party.

Decision of the Acting Chairman

After examination of the facts and circumstances of the case, the Acting Chairman gave his decision dated 30 March 1994 under the Tenth Schedule read with the Members of Uttar Pradesh Vidhan Parishad (Disqualification on ground of Defection) Rules, 1987. The strength of the splitaway Group was seven, which was more than one-third of the strength of Original Party, *i.e.* 13. The split was, therefore, valid in terms of provisions of para 3 of the Tenth Schedule to the Constitution. Accordingly, the Acting Chairman took cognizance of the split and formation of the new Party.

Subsequent Developments

Subsequently, on 30 March 1994, the above-mentioned seven MLCs again met the Acting Chairman and handed over a letter to him intimating that their Party, *i.e.* the Pragatisheel Janata Dal, had joined the Indian National Congress (INC).

After consideration of the facts in the light of the provisions stipulated under para 4 of the Tenth Schedule, the Acting Chairman gave his decision dated 31 March 1994 in the matter in which he held the merger valid. Accordingly, he allowed the merger of the Pragatisheel Janata Dal with the INC led by Smt. Susheela Rohatagi, in the Council.

Communist Party of India Merger Case (UPLC, 1994)

Claim for merger by the lone member of Communist Party of India with Samajwadi Party – Valid in terms of para 4 of Tenth Schedule – Allowed – Member treated accordingly.

Facts of the Case

On 4 March 1994, Shri Ramchandra Baksh Singh, the lone member of the Communist Party of India (CPI) in the Uttar Pradesh Legislative Council, in a communication addressed to the Acting Chairman, intimated that his Party had merged with the Samajwadi Party led by Shri Ramashankar Kaushik.

Decision of the Acting Chairman

After consideration of the facts and circumstances of the case, the Acting Chairman, Shri Nityanand Swami, gave his decision dated 4 March 1994 under the Tenth Schedule in the matter. The Acting Chairman held the merger valid in terms of provisions of para 4 of the Tenth Schedule. Accordingly, the Acting Chairman allowed the merger.

Janata Dal Split Case - II (UPLC, 1994)

Claim for split by 2 out of total 6 members of Janata Dal Legislature Party – Splitaway Group formed new party by the name of Krantikari Janata Dal – valid in terms of para 3 of Tenth Schedule – Members treated accordingly – Splitaway Party, Krantikari Janata Dal claimed merger with Samajwadi Party – Valid in terms of para 4 of Tenth Schedule – Merger allowed.

Facts of the Case

On 4 March 1994, the Janata Dal Legislature Party had 6 members in the Uttar Pradesh Legislative Council. On 4 March 1994, Shri Rajendra Singh and Shri Kunwar Pal Singh, both MLCs belonging to the Janata Dal, met the Acting Chairman and submitted a letter to him intimating that there was a split in their original Party and as a result they had formed a new Party by the name of the Krantikari Janata Dal with Shri Rajendra Singh, MLC, as its Leader. They requested the Acting Chairman to recognise the split and the new Party.

Decision of the Acting Chairman

After considering the facts and material on record, the Acting Chairman, Shri Nityanand Swami, gave his decision dated 4 March 1994 under the Tenth Schedule in the matter. As stated above, the Janata Dal Legislature Party had six members in the House. As two out of the six members constituted one-third of the total strength, the Acting Chairman found the split valid under para 3 of the Tenth Schedule to the Constitution of India read with the Members of Uttar Pradesh Vidhan Parishad (Disqualification on ground of Defection) Rules, 1987. Accordingly, he took cognizance of the split and formation of the new Party.

Subsequent Developments

Subsequently, on 18 March 1994, both the above-mentioned MLCs belonging to the Krantikari Janata Dal, again met the Acting Chairman and submitted a letter to him intimating that their Party had merged with the Samajwadi Party led by Shri

Ramashanker Kaushik. They requested the Acting Chairman to recognise the merger. After considering the provisions stipulated under para 4 of the Tenth Schedule, the Acting Chairman gave his decision dated 29 March 1994, in which he found the merger valid and accordingly allowed the merger.

Samajwadi Party Split Case (UPLC, 1996)

Claim for split by 2 out of total 6 members of Samajwadi Party – Splitaway Group formed new party by the name of Pragatisheel Dal – Valid in terms of para 3 of Tenth Schedule – Split taken cognizance of – Members treated accordingly.

Facts of the Case

The Samajwadi Party had six members in the Uttar Pradesh Legislative Council. On 3 September 1996, Shri Sunder Singh Baghel and Shri Ram Chandra Baksh Singh, both MLCs belonging to the Samajwadi Party, met the Chairman and gave a letter intimating that there was a split in their Party and as a result they had formed a new Party by the name of the Pragatisheel Dal.

Decision of the Chairman

After considering the facts of the case and material on record, the Chairman, Shri Nityanand Swami, gave his decision dated 3 September 1996 under the Tenth Schedule in the matter. As two out of the total six members constituted one-third of the original Party, the split was found valid under the provisions stipulated in para 3 of the Tenth Schedule read with the Members of Uttar Pradesh Vidhan Parishad (Disqualification on ground of Defection) Rules, 1987. Accordingly, the Chairman took cognizance of the split.

Indian National Congress Split Case (UPLC, 1997)

Claim for split by 1 out of total 3 MLCs of Indian National Congress – Splitaway Group formed new party by the name of Bharatiya Kisan Kamagar Party – Valid in terms of para 3 of Tenth Schedule – Members treated accordingly.

Facts of the Case

The Indian National Congress had three members in the Uttar Pradesh Legislative Council. Shri Jagat Singh, MLC, in a communication dated 10 April 1997 addressed to the Chairman, Uttar Pradesh Legislative Council, intimated that consequent upon a split in his original Party, *i.e.* the Indian National Congress or the INC, he had formed the Bharatiya Kisan Kamagar Party.

Decision of the Chairman

After consideration of facts and circumstances of the case, the Chairman, Shri Nityanand Swami, gave his decision under the Tenth Schedule in the matter. As one out of the three members constituted one-third of the undivided INC Legislature Party, the split was found valid in terms of provisions of para 3 of the Tenth Schedule. Accordingly the Chairman took cognizance of the split.

Briha Samajwadi Dal Merger Case (UPLC, 1997)

Claim for merger by lone member of Briha Samajwadi Dal with Samajwadi Party – Valid in terms of para 4 of Tenth Schedule – Merger allowed – Member treated accordingly.

Facts of the Case

On 21 April 1997, Shri Kashi Nath, the lone member of the Briha Samajwadi Dal addressed a communication stating that his party had merged with the Samajwadi Party led by Shri Ahmed Hassan in the Legislative Council.

Decision of the Acting Chairman

After considering the facts and circumstances of the case, the Chairman, Shri Nityanand Swami, gave his decision dated 22 April 1997 under the Tenth Schedule in the matter. The Chairman held that the merger was valid in terms of provisions of para 4 of the Tenth Schedule and accordingly allowed the same.

Uttaranchal

Nationalist Congress Party Merger Case (Uttaranchal LA, 2003)

Claim of merger of Nationalist Congress Party with Indian National Congress – Confirmed by Party being merged with – Recognised in terms of para 4 of Tenth Schedule – Member treated accordingly.

Facts of the Case

Shri Balbeer Singh Negi was the lone member of the Nationalist Congress Party (NCP) in the First Uttaranchal Legislative Assembly. He intimated the Speaker *vide* his letter dated 11 October 2003 that his Party had merged with the Indian National Congress (INC) Legislature Party. Earlier, he announced at the Chief Minister's residence that he was joining the INC. The Leader of the INC Legislature Party, Shri Narayan Dutt Tiwari, also conveyed his consent for the merger. Shri Negi requested the Speaker to recognise the merger and allot him seat with INC members.

Decision of the Speaker

After consideration of the facts and circumstances, the Speaker, Shri Yashpal Arya, gave his decision dated 2 December 2003, under the Tenth Schedule in the matter. As Shri Negi was the lone member of the NCP in the Assembly, the Speaker found the merger valid in terms of para 4 of the Tenth Schedule to the Constitution and accordingly allowed the same.

West Bengal

Purulia Congress Party Merger Case (WBLA, 2001)

Claim for merger – Request for recognition of merger of Purulia Congress Party with Indian National Congress – Leader, Indian National Congress Legislature Party confirmed merger – Request for merger acceeded to as it was valid in terms of para 4 of Tenth Schedule.

Facts of the case

On 5 December 2001, Shri Nepal Mahato, MLA, belonging to the Purulia Congress Party, *vide* his communication dated 27 November 2001, requested the Speaker, West Bengal Legislative Assembly, to accord recognition to the merger of the Purulia Congress Party with the Indian National Congress (INC) in the Assembly under Paragraph 4 of the Tenth Schedule to the Constitution and to consider him as a member of the INC Legislature Party consequent upon the aforesaid merger.

Subsequently, Shri Atish Chandra Sinha, MLA and Leader of the INC Legislature Party, *vide* his letter dated 5 December 2001, requested the Speaker to treat Shri Nepal Mahato as a member of the INC Legislature Party. Along with his letter, Shri Sinha also enclosed a copy of the letter of acceptance addressed to Shri Nepal Mahato, by the President of the West Bengal Pradesh Congress Committee in the matter of merger of the Purulia Congress Party with the Indian National Congress.

Decision of the Speaker

Taking into consideration all the related matters of the case, the Speaker, West Bengal Legislative Assembly, Shri Hashim Abdul Halim allowed the merger and passed the following orders on 20 December 2001:

> After careful perusal of the documents placed before me and after going through the relevant provisions of the Tenth Schedule to the Constitution of India, I am satisfied of the merger of the Purulia Congress Party with the Indian National Congress. Accordingly, I hereby allow such merger in the West Bengal Legislative Assembly with effect from

29 November 2001 since it does not attract disqualification under paragraph 4 of the Tenth Schedule to the Constitution of India. Consequent upon the above, Shri Nepal Mahato, MLA has become a member of the Indian National Congress in the West Bengal Legislative Assembly for all purposes and Indian National Congress shall be deemed to be the political party to which he belongs with effect from 29 November 2001 for the purpose of sub paragraph (1) of paragraph 2 of the Tenth Schedule to the Constitution of India and to be his original party for the purpose of paragraph 4, *ibid.*

Consequential Action

The decision of the Speaker was published in the West Bengal Legislative Assembly Bulletin Part II dated, 20 December 2001.

Delhi

Haroon Yusuf and Ajay Maken Case (Delhi LA, 1995)

Two members expelled from the original Party: Indian National Congress – Declared unattached and seated separately – Subsequently 1 out of 2 members was taken back into the Party – Held – Nothing wrong under the Law – Allowed – On request the other member was also inducted into the party and both treated as members belonging to the Indian National Congress.

Facts of the Case

On 3 August 1995, the Speaker, Shri Chartilal Goel received the following communication from Shri Jag Parvesh Chandra, Leader of the Congress Legislature Party in the Assembly:

> "I have received a communication from the President of Delhi Pradesh Congress Party that since Shri Haroon Yusuf and Shri Ajay Maken have been expelled from Congress, I, therefore, request you to allot to them separate seats in the House."

The members were afforded an opportunity to furnish their comments which were, however, not received in writing. The case was examined under the provisions of the Tenth Schedule of the Constitution.

The issue of determination before the Speaker was as to what should be the status of the members expelled since the Tenth Schedule to the Constitution is silent on this aspect. The decision, therefore, had to be based on the established practices and conventions in this regard in Parliament and State Legislatures.

Decision of the Speaker

Relying on the established practices and conventions in this regard in Lok Sabha and in many State Legislatures, the Speaker gave the following decision on 8 August 1995:

> "Whereas Shri Ajay Maken and Shri Haroon Yusuf were elected to the Legislative Assembly of NCT of Delhi on Congress (I) ticket *vide*

Election Commission Notification No.308/LAS/93 (No. 171) dated 1 December 1993 and sworn in as members on 14.12.93.

And whereas Shri Ajay Maken and Shri Haroon Yusuf have been expelled from the Congress (I) Legislature Party as per communication dated 3 August 1995 received from Shri Jag Parvesh Chandra, Leader of the Congress (I) Legislature Party.

And now, therefore, after careful examination of the case and in exercise of the powers conferred upon me under the Tenth Schedule to the Constitution of India, I, Chartilal Goel, Speaker, Delhi Vidhan Sabha, do hereby declare Shri Ajay Maken and Shri Haroon Yusuf as 'unattached' members with immediate effect."

Subsequent Development

On 15 March 1996, Shri Jag Parvesh Chandra, Leader of the Congress Legislature Party *vide* his communication to the Speaker informed that Shri Ajay Maken who had been earlier expelled by the Congress (I) Party had been taken back in the Party and therefore, the party position of the Congress (I) might accordingly be revised. The matter was examined with reference to the Tenth Schedule. As the member declared 'unattached' was taken back into his parent party, he did not attract the provisions of the Tenth Schedule. On 19 March, 1996, the Speaker, therefore, made the following pronouncement revoking the status of 'Unattached' in respect of Shri Ajay Maken and declaring him as a member of the Congress Party:

I have to inform the House that I have received a communication dated 15 March, 1996 from Shri Jag Parvesh Chandra, Leader of the Congress (I) Legislature Party. In this communication, Shri Jag Parvesh Chandra has informed that Shri Ajay Maken, a member of this House, who had been earlier declared 'unattached' has been taken back into the Congress (I) Party;

I have had this matter examined with reference to the provisions of the Tenth Schedule to the Constitution which deals with matters regarding disqualification on ground of defection. Sub-section (2) of the Tenth Schedule provides that an Independent member shall be disqualified for being a member of the House if he joins any political party after the election. This provision does not apply in case of Shri Ajay Maken as he had not been elected as an Independent member but had been declared 'unattached' by me subsequently. The word 'unattached' does

> not figure either in the Anti-defection Law or Rules. It is a convenient practice in the State Legislatures that if an elected member is expelled from the party, he is declared, for functional purposes, as an 'unattached' member;
>
> Since Shri Ajay Maken, an 'unattached' member has been taken back in the Congress (I) Party, there is no bar under the Anti-defection Law to his re-joining the party from which he has been expelled. Accordingly, I hold that status of Shri Ajay Maken hereafter will be that of the member of Congress(I) Legislature Party.

Meanwhile, the other unattached member, Shri Haroon Yusuf also represented to the Hon'ble Speaker *vide* his letter dated 13 and 17 January 1997 to revoke his 'Unattached' status on the ground that he had been inducted back in his original political party. The Leader of the Congress Legislature Party had also appended his minutes on the petition presented by the member supporting his contention. Therefore, on the same day, *i.e.* 19 March 1997 the Speaker declared him too as a member of the Congress (I) Party *vide* an announcement made in the House.

Janata Dal Split Case (Delhi LA, 1996)

Claim for split in original party: Janata Dal consisting of 4 members – Formation of a new Party: Janata Dal (Bidhuri) – Accorded recognition -- Subsequently the new Party merged with Indian National Congress Party – Merger recognised – Members treated as members of that Party.

Facts of the Case

On 2 April 1996, 3 out of 4 Janata Dal members in the House addressed a communication to the Speaker, Shri Chartilal Goel, informing him that they had formally split from the Janata Dal and formed a new group called "Janata Dal (Bidhuri)". The members further claimed that the new group had come into being *w.e.f.* 30 March 1996 and requested that they be granted recognition as such. The members, however, did not give any reasons for effecting the split.

The issue for consideration before the Speaker was whether the Group respresented a faction, which arose as a result of the split and whether the Group consisted of not less than one-third of the members of the Legislature Party.

Decision of the Speaker

After examining the matter in the light of the provisions of the Tenth Schedule and the documents on record, the Speaker, Shri Chartilal Goel, upheld the split in the Janata Dal as valid and accorded recognition to the split-away group as the "Janata Dal (Bidhuri)" in the Assembly *vide* his following order dated 12 April 1996:

> Whereas Shri Ramvir Singh Bidhuri, Shri Parvez Hashmi and Shri Mateen Ahmed were elected to the Legislative Assembly of the National Capital Territory on Janata Dal ticket *vide* Election Commission Notification No.308 LAS/93 (No.171) dated 1 December 1993 and sworn in as members on 14 December 1993;
>
> And whereas Shri Ramvir Singh Bidhuri, Shri Parvez Hashmi and Shri Mateen Ahmed have presented me a communication in person today, the 2 April 1996 stating that they have constituted a separate group (Political Party) with effect from 30 March 1996 by the name 'Janata

Dal (Bidhuri)' which has arisen as a result of the split in the Janata Dal Legislature Party;

And now, therefore, after careful examination of the case and in exercise of powers conferred upon me under the Tenth Schedule to the Constitution of India, I, Chartilal Goel, Speaker, Delhi Legislative Assembly, do hereby declare that since Shri Ramvir Singh Bidhuri, Shri Parvez Hashmi and Shri Mateen Ahmed constitute a group fepresenting faction which has arisen as a result of the split in the four member original political party and this group consists of not less than one-third members of such Legislature Party, accordingly, henceforth the group consisting of Shri Ramvir Singh Bidhuri, Shri Parvez Hashmi and Shri Mateen Ahmed shall be treated as "Janata Dal (Bidhuri)" with immediate effect, as requested by them.

Subsequent Developments

On 17 April 1996, the members of Janata Dal (Bidhuri) addressed a communication to the Speaker, Shri Chartilal Goel, informing him that the newly formed Janata Dal (Bidhuri) Group had decided to merge with the Indian National Congress.

They further requested that they might be treated as members of Indian National Congress in the Assembly and seats be allotted to them along with the members of the Indian National Congress.

In pursuance of the case, the comments of the Leader of the Indian National Congress, Shri Jag Parvesh Chandra, were sought on the following points:

(i) whether these 3 members had been admitted in the Congress Party and whether they should be shown as members belonging to the Congress (I) Legislature Party; and

(ii) whether they should be allocated seats in the bloc meant for Congress (I) members and, if so, in what manner.

Shri Jag Parvesh Chandra *vide* his letter dated 1 May 1996 confirmed that the aforesaid members had joined the Indian National Congress and stated that they might, therefore, be shown as members belonging to the Congress (I)Legislature Party.

After examining the matter in the light of the provisions of the Tenth Schedule and documents on record, the Speaker, Shri Chartilal Goel, on 6 May 1996, recognised the merger of the Janata Dal (Bidhuri) with the Indian National Congress *vide* his following order:

Whereas *Sarvashri* Ramvir Singh Bidhuri, Parvez Hashmi and Mateen Ahmed, originally elected on Janata Dal ticket to the Legislative Assembly of the National Capital Territory of Delhi constituted a separate group by the name of Janata Dal (Bidhuri) as a result of split in Janata Dal Legislature Party; and

Whereas the members belonging to this Group consisting of *Sarvashri* Ramvir Singh Bidhuri, Parvez Hashmi and Mateen Ahmed were treated as members belonging to Janata Dal (Bidhuri) *vide* my order dated 2 April 1996 pursuant to receipt of a communication presented by the aforesaid 3 members, in person; and

whereas the members belonging to the Janata Dal (Bidhuri) Group have now informed me in writing *vide* their letter dated 17 April, 1996 that they have decided to merge the Group with the Indian National Congress led by Shri P.V. Narsimha Rao and have requested for their recognition as part of the Congress Party; and

Now, therefore, after careful examination of the case and in exercise of the powers conferred upon me under the Tenth Schedule to the Constitution of India, I, Chartilal Goel, Speaker, Delhi Legislative Assembly, do hereby declare that *Sarvashri* Ramvir Singh Bindhuri, Parvez Hashmi and Mateen Ahmed, shall hence forth be treated as members belonging to the Congress Legislature Party with immediate effect, as requested by them.

Pondicherry

K. Anbalagan and Subramanian Case (Pondicherry LA, 1986)

Petition filed for disqualification against 2 members for voluntarily giving up membership of All India Anna Dravida Munnetra Kazhagam (AIADMK) having 6 members – Respondents heard in person – Claimed split in the original party and formation of new party called 'Dravida Iyakkam' – Claim of split could not be established – Members disqualified.

Facts of the Case

Shri P.R. Loganathan, MLA and the Leader of All India Anna Dravida Munnetra Kazhagam (AIADMK) Legislature Party and *Sarvashri* P. Purushothaman, S. Ramassamy and R. Somasundaram, all MLAs, filed separate petitions before the Speaker Shri Kamichetty Sri Parasurama Varaprasada Rao Naidu under the Tenth Schedule to the Constitution, against Shri K. Anbalagan and Dr. M.A.S. Subramanian, MLAs for voluntarily giving up the membership of their original political party, AIADMK.

The petitioners submitted that Shri. K. Anbalagan and Dr. M.A.S. Subramanian were elected to the Assembly as AIADMK candidates. However, they left that party and joined Dravida Munnetra Kazhagam (DMK) on 14 October 1986. Certain press reports dated 15 and 17 October, 1986 were quoted in support of their contentions.

Meanwhile, the Speaker received letters dated 16 October 1986 from the respondents requesting for separate allotment of seats. Shri D. Ramachandran, MLA and Leader of the DMK Legislature Party and Shri R.V. Janakiraman, MLA and Whip of the Dravida Munnetra Kazhagam Legislature Party requested the Speaker that since consequent upon the splitting-away of Dr. M.A.S. Subramanian and Shri K. Anbalagan from All India Anna Dravida Munnetra Kazhagam, its strength in the House had been reduced from six to four members, the Dravida Munnetra Kazhagam might be recognised as the main Opposition Party and the Leader of the party be declared as the Leader of Opposition in the House. They might also be allotted seats accordingly.

After ascertaining that the petitions were in order, copies of the same were forwarded to the respondents for comments. The respondents requested for extension of time for filing their replies. The Speaker allowed them further time and thereafter, personally heard them also.

During the personal hearing, they requested that certain witnesses cited by them might be summoned and examined as witnesses from their side and they may also be permitted to cross-examine them. On this the Speaker observed:

> Unless they are able to show or explain to me the specific relevance and necessity, the question of examining or cross-examining any of the witnesses does not arise for consideration. The inspection of records as requested by the said members was complied with. Their request to be represented by the counsel was also agreed to. Neither their Advocate nor the members argued or represented anything more than what they have put forward in writing. But, on 27 November 1986, they made another written request asking for oral examination of Thiru D. Ramachandran, Leader of the Dravida Munnetra Kazhagam Legislature Party and Thiru G. Venugopal, an Ex-M.L.A. and so-called leader of 'Dravida Iyakkam', a political party stated to have been formed by them. This request was not acceded to because it was felt to be irrelevant for the reasons that will be apparent hereinafter. On 28 November 1986, the Advocate and the parties were heard and the proceedings were closed.

The respondents contended in their replies that (i) they did not join DMK Party as reported in the press; (ii) that it was due to political and policy differences they had with AIADMK, that they decided to form a new party called 'Dravida Iyakkam', and they became members and executive member of 'Dravida Iyakkam'; (iii) that they incurred no disqualification in terms of provisions of para 3 of the Tenth Schedule; and (iv) that since they were not less than one-third of the members of the Legislature party, they formed a faction in the Assembly which amounted to a split as per provisions of para 3 of the Tenth Schedule.

The issues for consideration before the Speaker were (i) whether the two members, Shri. K. Anbalagan and Dr. M.A.S. Subramanian had voluntarily given up their membership of the political party to which they belonged and therefore, became subject to disqualification under the Tenth Schedule to the Constitution as incorporated in the Government of Union Territories Act, 1963 *vide* Section 14A of the said Act; and (ii) whether the claims made by the above named members under para 3 of the Tenth Schedule to the Constitution that they constituted a Group

representing a faction and that the said group consisted of not less than one-third of the members of a legislature party were sufficient to take them out of the purview of para 2 of the Tenth Schedule to the Constitution.

Decision of the Speaker

Taking into consideration all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule, the Speaker pronounced his judgement in the matter on 18 December 1986. Gist of the decision is as follows:

(1) With regard to issue (i) above, the Speaker observed: It is unequivocally on record that the two members left the All India Anna Dravida Munnetra Kazhagam political party to which they belonged by virtue of explanation of paragraph 2 of the Tenth Schedule to the Constitution. The members themselves have admitted in their letter dated 16 October 1986 and in their explanation letter dated 3 November 1986 that they had differences with their original political party, *viz.* All India Anna Dravida Munnetra Kazhagam with respect to Hindi issue and due to political and policy differences, they became members of the 'Dravida Iyakkam' alleged to have been formed into a party. Nothing more seems to be required to prove that the said two members have voluntarily given up their membership of the All India Anna Dravida Munnetra Kazhagam which was their original political party.

Hence there is no dispute that the two members concerned have voluntarily left their original party which was declared to be All India Anna Dravid Munnetra Kazhagam;

(2) With regard to issue (ii) above *i.e.* whether para 3 is attracted or not, the Speaker observed: In the instant case both the members only claim that they constituted a Group and represent a faction, which resulted in a split in the AIADMK. This obviously is not what is meant in the statute to get the protection under paragraph 3. *Prima facie*, the said two members have no case that their faction/Group came into existence as a result of a split in their original political party, even though numerically they constituted not less than one-third of the members of the legislature party. The onus is very much on the members to prove that they squarely come under the ambit of paragraph 3 of the Tenth Schedule, that there was a split in the original political party, *viz.* All India Anna Dravida Munnetra Kazhagam and that a group representing the faction has arisen as a result of such split. The members have neither

pleaded nor proved these aspects. In view of this, it is neither necessary nor relevant for me to go into the other factual matters or contentions raised by the petitioners or the respondents. Even the specific request of the respondents to examine Thiru D. Ramachandran, M.L.A and Thiru G. Venugopal, Ex-M.L.A. becomes irrelevant in this context, apart from the fact that they are interested persons and their evidence cannot be relied upon to take a fair decision in the matter. Nor have any specific documents been produced by the respondents to show that their case fits in with the requirements of paragraph 3 of the Tenth Schedule.

(3) On the aspect of split, the Speaker further observed: In order to satisfy that there was a split, there must be an allegation and proof that there was a split in All India Anna Dravida Munnetra Kazhagam Party. This has not been done. A split does not occur simply because a member leaves the party concerned voluntarily. It only occurs where a substantial chunk or segment of the party causes a division of the party which leads to a faction in the collective cause of being a well knit and integrated Group based on certain objectives and principles. It is now well settled that to constitute a split there must be a split from top to bottom creating two different segments each closely knit and comprising of several members subscribing to certain principles and policies which will be regarded as a faction. In this case there is no evidence or material to lead to the inference that there was any split of All India Anna Dravida Munnetra Kazhagam from top to bottom resulting in the creation of two factions, one comprising of two members concerned. In my view, therefore, the two main conditions required under paragraph 3 are not satisfied and therefore the two members concerned must be held to have incurred the disqualification under the Tenth Schedule to the Constitution. The contention of the respondents that they have formed into a new faction or a party is nothing but an afterthought which is not proved. Accordingly, the claim made by the said two MLAs. *viz.* Shri K. Anbalagan and Dr. M.A.S. Subramanian is not substantiated.

(4) Finally the Speaker held: "I therefore hold that both Thiru K. Anbalagan and Dr. M.A.S. Subramanian have voluntarily given up their membership of their original political party which set them up as its candidates in the General Election and that their action would amount to defection and I decide that their case attracts the provision of paragraph 2(1) of the Tenth Schedule to the Constitution of India and that they are

disqualified for being members of the Legislative Assembly".

Consequential Action

The decision of the Speaker was published in the Bulletin Part II on 18 December 1986 and notified in the State Gazette.

P. Rajavelu and Deivanayagam Case (Pondicherry LA, 1990)

Petition for disqualification against 2 members for voluntarily giving up membership of Janata Dal consisting of 4 members in the House and Joining another party: Janata Dal (S) – Allowed – Members disqualified – Aggrieved members filed Review Petition on ground of violation of rules of natural justice requesting the Speaker to review and revoke his order – Petition allowed – Earlier order revoked.

Facts of the Case

Shri. V. Pethaperumal, MLA and Leader of the Janata Dal Legislature Party of Pondicherry Unit filed a petition before the Speaker, Shri G. Palaniraja under the Tenth Schedule to the Constitution and the relevant Rules, against *Sarvashri* P. Rajavelu and K. Deivanayagam, both MLAs for voluntarily giving up the membership of their original party *i.e.*, the Janata Dal.

The contentions of the petitioner were that the above-named two members were elected to the Assembly on the Janata Dal Party tickets. Subsequently, there was a split in the party and Janata Dal (S) came into existence in the House as a result of the split. The said two members were actively involved in the political activities of Janata Dal after the split. However, later on they joined the Janata Dal (S) almost after one and a half months of its formation. They did not join the party on the day it was formed or immediately thereafter. The petitioner further contended that if any person joined Janata Dal (S) after a lapse of one and a half months, it would not amount to a split but a defection. So they were liable to be disqualified from the membership of the Legislative Assembly.

Decision of the Speaker

After taking into consideration the facts and the circumstances of the case, provisions of the Tenth Schedule and Rules, the Speaker pronounced his judgement on 20 December 1990. The gist of the order is as under:

(i) A split in the original party took place one and a half months ago. Thiru P. Rajavelu and Thiru K. Deivanayagam did not join the

Janata Dal (S) Party immediately. After having functioned as active members in the Janata Dal for the past one and a half months, if they have joined any other Party, it will not amount to a split. On the other hand, it will be a defection;

(ii) Split is not a continuing process. It cannot go on for months. No one should take it as an opportunity for defection in a split which took place about one and a half months ago. So, it is only a defection on the ground, that Thiru P. Rajavelu and Thiru K. Deivanayagam have voluntarily given up their membership from which Party they were elected.

Both the members were, thereafter, declared disqualified from the membership of the Assembly for voluntarily giving up their membership from their original party *i.e.* the Janata Dal Party, with immediate effect.

Subsequent Developments

Sarvashri P. Rajavelu and K. Deivanayagam jointly filed an application before the Speaker praying for review of above decision dated 20 December 1990. They also cited a precedent where the order of disqualification of members of the Nagaland Legislative Assembly in August 1990, was reviewed by the Speaker.

In their application, they urged that mandatory provision under Rule 7(3) of the Members of the Pondicherry Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 was not complied with as no notice of the petition presented by Shri V. Pethaperumal, MLA and Leader of the Janata Dal Party, seeking their disqualification was given to them. They also submitted that there was non-compliance with principles of natural justice as they were not given an opportunity of being heard. They further submitted that another member, Shri A. Bakthavatchalam was also indicted in the petition by Shri V. Pethaperumal but only they, the respondents, were subjected to disqualification. Lastly, they pleaded that there was a split in the Janata Dal Party and that, out of four members of Janata Dal Legislature Party, three had become members of Janata Dal (S) and as such there had been a split in terms of para 3 of the Tenth Schedule to the Constitution.

Reviewing his earlier order of 20 December 1990, the Speaker, Shri G. Palaniraja, passed the following order on 26 December 1990:

> I find considerable force in the submissions of the members. Therefore, I uphold the contentions of the members, Thiruvalargal P. Rajavelu and K. Deivanayagam and review the order passed on 20.12.1990 and hold that there was a split in Janata Dal Party in terms of para 3 of the

Tenth Schedule to Constitution of India and that the members have not committed any act attracting disqualification and that in fact there was no defection as contended by Thiru V. Pethaperumal and as such they have not given up their membership of the party from which they were elected. Hence, the petition by Thiru V. Pethaperumal is dismissed.

In view of the same, I hold that my order on a petition given by Thiru V. Pethaperumal, is hereby revoked as invalid *ab initio* and that the *status-quo ante* prior to the impugned order dated 20.12.1990 is restored. Hence, Thiruvalargal P. Rajavelu and K. Deivanayagam, do not suffer from any disqualification.

Hence, I, G. Palaniraja, Speaker of the Pondicherry Legislative Assembly, hereby decide that Thiru P. Rajavelu ... and Thiru K. Deivanayagam ... shall continue to act as members of the Pondicherry Legislative Assembly and deemed to be so without any interruption and declare accordingly.

Consequential Action

The decision of the Speaker was published in the Assembly Bulletin Part II dated 26 December 1990.

P. Kannan Case (Pondicherry LA, 1996)

Petition for disqualification against an Independent member for joining Tamil Maanila Congress (TMC) filed by a person who was not a member of the House – Petition dismissed for not being in consonance with the Rules – Subsequently another petition filed on the same ground by a member – Found in order – Petition dismissed for having no merit.

Facts of the Case

On 1 August 1996, one Shri S. Jothi Narayanasamy who was not a member of the House filed a petition before the Speaker, Shri V.M.C. Sivakumar, under the Tenth Schedule to the Constitution, against Shri P. Kannan, MLA seeking his disqualification for joining Tamil Maanila Congress (TMC) (Moopanar Party) after being elected as an Independent member to the Assembly. The petitioner further stated that Shri P. Kannan had intimated the Assembly Secretariat that he was elected as an Independent member and that the press conferences and the news bulletins disclosed that he had joined the Tamil Maanila Congress and became the leader of TMC in Pondicherry. It was the contention of the petitioner that under sub-para (2) of paragraph 2 of the Tenth Schedule to the Constitution of India, a member who had been elected to the Legislative Assembly as an Independent candidate, stood disqualified if he joined a political party.

On perusal of the petition and the relevant Rules, the Speaker found the petition not in order on the ground that it was not filed by a member of the Assembly as required under Rules of the Pondicherry Legislative Assembly (Disqualification on the grounds of Defection) Rules, 1986 and observed:

> "I find that the petition is not complying with the requirements of Rules 6(2) of the said Rules, since the petition in relation to Thiru P. Kannan, member of the 10th Legislative Assembly is made in writing by Thiru S. Jothi Narayanasamy, who is not a member of the House. According to Rule 7(2) of the said Rules, 1986, if the petition does not comply with the requirements of Rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly".
>
> The petition was, therefore, dismissed.

On the same day *i.e.* 1 August 1996, Shri V. Vaithilingam, MLA and Leader of Opposition filed a petition against Shri P. Kannan before the Speaker under the Tenth Schedule to the Constitution for joining a political party inspite of being elected as an Independent member to the Legislative Assembly.

The contention of the petitioner was that Shri P. Kannan, MLA was elected as member of the Legislative Assembly from Cassicadai constituency as an Independent member on the 'Cycle' symbol. But, later on, he joined Tamil Maanila Congress (TMC) (Moopanar Party) and therefore, incurred disqualification under the Tenth Schedule to the Constitution and relevant Rules. The petitioner had enclosed copies of press cuttings to substantiate his contentions.

As the petition was in order, it was forwarded to the respondent, Shri P. Kannan for his comments. The respondent submitted his reply on 30 September 1996. His submissions were that he had been an active member of TMC (Moopanar) right from its inception. Even prior to the election, during the filing of election papers before the Returning Officer he had been functioning as a member of TMC and so in this sense he would not incur any disqualification whatsoever under the Tenth Schedule to the Constitution. He supported his contentions with various documentary evidences.

The issues for determination before the Speaker were:

(a) Whether the respondent, Shri Kannan had been elected to the Legislative Assembly as Independent member;

(b) Whether subsequent to his election to the Legislative Assembly, Shri Kannan had joined the TMC (Moopanar) and thus incurred the disqualification under the Tenth Schedule to the Constitution; and

(c) Whether disqualification was incurred as per the provision contained in the Tenth Schedule;

Decision of the Speaker

After taking into consideration the facts and circumstances of the case, the Speaker, Shri V.M.C. Sivakumar passed his order on the issue on 21 May 1997. The gist of the order is:

(i) With regard to the issues at points (a) and (b) the Speaker observed that the documents produced by the respondent revealed that he was an active member of TMC (Moopanar) right from its inception and was functioning as a member of that party even during the filing of his nomination papers. He was classified as Independent member by the Returning officer, merely because of some technical requirements;

(ii) With regard to the question at point (b), the Speaker observed, "a conscientious approach to the problem certainly reveals that there was no question of his joining the TMC (Moopanar), subsequent to election, as his association with the party is quite obvious and conspicuous;

(iii) With regard to the question, whether the respondent incurred disqualification as per the provisions of the Tenth Schedule, the Speaker was of the opinion, "perusal of the evidence produced clearly indicates that this is not a case of floor crossing ... the object of the Tenth Schedule is to curb unethical defection ... the facts are so glaring that no defection as such is involved in this case. The candid statements and upright conduct of Thiru P. Kannan vouch-safe this aspect. The propelling motivation to indulge in unhealthy practice of floor crossing which the Tenth Schedule prohibits, is totally missing in the instant case. On the other hand, a continuous thread of striving to hold to the party to which he belongs right from the inception, is found from the documents produced. His identification with the party under the above circumstances is not a factor to be canvassed under the Tenth Schedule. Only the act of Returning Officer alienated him from Tamil Maanila Congress party and treated him as independent and it continues to be so far all technical purposes.

Finally, the Speaker held:

> In the result, I hereby declare that there is neither floor crossing nor unethical defection and as such the provisions of para 2 of the Tenth Schedule to the Constitution cannot be applied to the instant case. Consequently, I make it clear that Thiru P. Kannan has not incurred any disqualification under the Tenth Schedule to the Constitution read with provisions of the Members of the Pondicherry Legislative Assembly (Disqualification on grounds of Defection) Rules, 1986. So I dismiss the petition filed by Thiru V. Vaithilingam, as devoid of any merit.

Consequential Action

The decision of the Speaker was published in the Assembly Bulletin Part II dated 21 May 1997 and notified in the State Gazette.

M. Manjini Case (Pondicherry LA, 1999)

Petition for disqualification for voluntarily giving up membership of original party: Communist Party of India (CPI) consisting of 2 members and joining Pattali Makkal Katchi (PMK) filed – Member's comments on the petition invited – On the basis of the comments received the Speaker adjudged the member to be [CPI (II)] – Subsequently the Speaker vacated the Office – New Speaker elected – The issue taken up by the new Speaker – Member Disqualified.

Facts of the Case

On 20 December 1999, Shri R. Viswanthan, MLA and Leader of Communist Party of India (CPI) Legislature Party filed a petition before the Speaker Shri V.M.C. Sivakumar under the Tenth Schedule to the Constitution, against Shri M. Manjini, MLA for voluntarily giving up his membership of Communist Party of India (CPI).

The petitioner submitted that Shri M. Manjini, MLA had given up his membership of CPI and joined Pattali Makkal Katchi (PMK) on 9 December 1999. In support of his contentions, the petitioner had annexed the newspaper clippings and also a video cassette recording containing the news telecast of his joining PMK by SKYSAT, a private T.V. Channel and an interview given by him to the Press.

After ascertaining that the petition was in order, a copy of the same along with the enclosures was forwarded to Shri M. Manjini on 14 March 2000 for his comments. The main points made by the respondent were that he had not given up his membership from CPI from which party he was elected to Pondicherry Legislative Assembly. He further stated that he had not joined any party, nor had any party admitted him and that the allegations levelled by the petitioner were related to the internal affairs of the CPI and that he still continued to be the member of that party.

The Speaker, Shri V.M.C. Sivakumar recorded on 16 March 2000 on the comments received from the respondent that he was accepting the explanations of the respondent and decided that the respondent was adjudged to be a member of CPI (II) in the Legislative Assembly.

On 18 March 2000, V.M.C. Sivakumar vacated the office of the Speaker and Shri A.V. Subramanian was elected the new Speaker of the House.

The Speaker, Shri A.V. Subramanian took up the case on a request made by the petitioner, Shri R. Viswanathan vide his letter dated 4 July 2000. The Speaker then sent a letter to the Shri Manjini asking for his comments and also gave him an opportunity to explain his position in person. In reply on 9 August 2000, the respondent stated that he had already explained his position to the former Speaker, Shri, V.M.C. Sivakumar who found no reason to proceed with the case and allowed him to sit in the Assembly. He further stated that as the former Speaker had already taken a decision in his case, there was no provision in the Rules to reconsider the case.

The issues for consideration before the Speaker were:

(a) whether the petitioner had voluntarily given up the membership of his original party, C.P.I., and joined another political party, PMK;

(b) whether nothings of Shri V.M.C. Sivakumar, former Speaker, recorded on the letter of reply given by the respondent could be construed as his decision in accordance with the law;

(c) whether the contents of the petition were internal affairs of the C.P.I.; and

(d) whether the copies of documents *viz.* the decision taken by the former Speaker, petition given by the petitioner along with the documents annexed thereon, and the reply dated 15 March 2000 given by the respondent to the then Speaker, were to be supplied to the respondent as per his request.

Decision of the Speaker

On 8 September 2000, taking up the issues involved, the Speaker, Shri A.V. Subramanian observed the followings:

(i) On the issue at point (a) above, the exhibits such as newspaper clippings and the video cassette recording submitted by the petitioner proved that the respondent had voluntarily given up the membership of CPI and joined PMK in the presence of PMK leader Dr. R. Ramadoss. The respondent had also not denied the reports;

(ii) With regard to the issue at point (b) above, firstly, the recording of the then Speaker, Shri V.M.C. Sivakumar could not be construed as his decision or ruling for the reason that it did not comply with the requirements of natural justice. The order should be a speaking order. The decision should contain the case of the petitioner, the issues involved,

appreciation of the facts and evidence placed before the Presiding Officer and the findings on the issues with the reasons therefor. The recording of the Speaker at best amounts to his personal tentative opinion on the issue and was, therefore not, reported in the Bulletin Part II;

Secondly, since the respondent did not seek the Speaker's order declaring him as a faction of the party, C.P.I., on this score the subjective opinion of the former Speaker declaring him as a member of C.P.I. (II) could not be construed as a ruling.

Thirdly, no order as required under sub-rule (3) of the Rule 8 of the Members of Pondicherry Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 had been passed and communicated by the Speaker Shri V.M.C. Sivakumar on the issue;

(iii) With regard to the contention of the petitioner that the issue was purely internal affair of the CPI Party, the Speaker observed that the contention could not be accepted for the reason that during the Budget Session during discussion on the Demands for Grants on the floor of the House, the respondent had debated in support of the Cut Motion moved by the Opposition parties, while his Legislature Party, C.P.I., supported the ruling coalition Government;

(iii) On the issue of supplying the copies of documents, the Speaker observed that in view of the decision taken on issue No. (b), the question of furnishing the documents did not arise;

(iv) The Speaker further stated that the case law of Kashinath *vs* Speaker (SC 1873), as cited by the respondent in support of his reply, could not be applied in the instant case for the reason that it referred to a situation where a decision by the Speaker had already been taken.

Taking into consideration therefore, all the facts and the circumstances of the case, the Speaker decided:

"I, Thiru A.V. Subramanian, the Speaker of the Pondicherry Legislative Assembly hereby decide, under para 6 (1) of the Tenth Schedule to the Constitution of India as incorporated by section 14-A of the Government of Union Territories Act, 1963, that Thiru M. Manjini who was elected as a member of the Pondicherry Legislative Assembly from Mudaliarpet Legislative Assembly Constituency has incurred disqualification under the Tenth Schedule for being a member of the Pondicherry Legislative

Assembly with immediate effect and declare accordingly, under Rule 8 (1) of the members of Pondicherry Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986.

Consequential Action

The decision of the Speaker was published in Bulletin Part II dated 8 September 2000 and notified in the State Gazette.

S. Rathinam and Others Case (Pondicherry LA, 2000)

Petition for disqualification for voluntarily giving up membership of original Party: Tamil Manila Congress (Moopanar) consisting the 6 members and joining Tamil Manila Congress (S. Rathinam @ Manohar) filed – Respondents given opportunity to be heard in person – Claimed Split in the Party – Held no split in original party – Members disqualified.

Facts of the Case

Shri C. Jayakumar and Shri M. Kandasamy, MLAs filed petitions before the Speaker, Shri A.V. Subramanian under the Tenth Schedule to the Constitution against *Sarvashri* S. Rathinam @ Manohar, K. Rajasekaran and A. Elumalai, MLAs for voluntarily giving up the membership of their original party *i.e.* Tamil Manila Congress (Moopanar).

The petitioners submitted that the respondents were elected to the Legislative Assembly as candidates of Tamil Manila Congress (Moopanar) Party (TMC) (M). They had voluntarily given up the membership of that party and joined another political party/group called Tamil Manila Congress (S. Rathinam @ Manohar) floated by them thereby attracting disqualification under para 2 (1) (a) of the Tenth Schedule to the Constitution. They also stated that TMC (M) was recognised as a State Party in the State of Tamil Nadu and Union Territory of Pondicherry. As per the Party Rules, Pondicherry State TMC (M) should function under the control of TMC (M) with its Head Office located at Chennai. The Pondicherry Unit of TMC (M) was an integral and inseparable part of TMC (M). Therefore, TMC (M) was one composite organisation. At the time of General Elections to the Legislative Assembly in 1996, the candidature of the respondent members was sponsored and the relevant forms signed by the Party President, Shri G.K. Moopanar.

Since the petitions were in order, copies thereof were forwarded to the respondents for their comments.

In reply, the respondents contended that the Election Commission *vide* its order dated 12 September 1996 had recognised TMC (M) Party as a State Political Party in Pondicherry. The TMC (M) Party recognised in the State of Tamil Nadu

was distinct from the Party recognised in the Union Territory of Pondicherry even though it carried the same name as in Tamil Nadu. The notification issued in para 17 of the Symbol Order of 30 July 1999 showed TMC (M) as a political party in the UT of Pondicherry separately. This indicated that the Party of Pondicherry was an independent political party as per requirement of the Constitution. The TMC (M) of Pondicherry got its own by-laws and was governed by the same. The members of the party were registered under the said by-laws. They also pointed out that the petition did not comply with the mandatory provisions of the Members of Pondicherry Legislative Assembly (Disqualification on ground of Defection) Rules, 1986. The provisions which were not complied with were: (a) annexures did not contain the signatures of the petitioners; and (b) copy of the petition was not sent to the Leader of the Legislature Party.

On their request, the respondents were also given an opportunity of explaining their position to the Speaker in person on 25 December 2000. They were represented by the Additional Advocate General, Government of Tamil Nadu.

The issues for determination before the Speaker were:

(i) Whether the political party TMC(M) recognised in the Union Territory of Pondicherry was distinct from the TMC(M) party which was recognised in the State of Tamil Nadu as contended by the respondents;

(ii) Which was the 'original political party' in respect of the three members in relation to whom the petitions had been made and whether a 'split' had taken place in that 'original political party' in terms of paragraph 3 of the Tenth Schedule and whether the said three members constituted a faction arising out of the 'split'; and

(iii) Whether the petitions did not comply with the mandatory provisions as alleged by the respondents.

Decision of the Speaker

After careful consideration of the facts and circumstances of the case, the Speaker passed his order 25 December 2000. The gist of the order is as under:

(1) On issue (i) above, the Speaker observed that while the Notification issued by the Election Commission of India dated 2 April 1996 gave recognition to TMC(M) as State Party in Tamil Nadu, the Notification issued on 12 September 1996 extended that recognition to the TMC(M) in the Union Territory of Pondicherry. The recognition by the Election Commission of India was given only for the purpose of election and allocation of symbol. The TMC (M) both at Tamil Nadu and Pondicherry

was one and the same party headed by the same President, Shri G.K. Moopanar;

(2) On the issue at (ii) above, the Speaker observed that going by the meaning of 'Original Party' as mentioned in the Tenth Schedule and as per the relevant Rules of the Party, it was established that TMC (M) political party, recognised both in the State of Tamil Nadu and Union Territory of Pondicherry, was one and the same political party. The Rules also said that Pondicherry unit of TMC (M) should function under the control of TMC (M) with its Head Office at Chennai. This was not denied by the respondents. On this basis, the Speaker held that TMC (M) was the 'Original Political Party' in respect of the respondents;
On the issue, whether a split had taken place or not, the Speaker observed, "the true test for determining a 'split' is to see whether it has occurred in the original party as contradistinguished from the legislature party. Also, the 'split' must be vertical in the 'original political party'. The respondents have not shown that a split has occurred in the original political party outside the legislature which put up candidates to fight election to the House of the legislature and that the split was vertical from top to bottom of the party functionaries in the original political party. Therefore, there is no valid split in the original political party. The split in the original political party should precede the split in the legislature party. As there is no valid 'split' in the original political party which is a condition precedent for recognition of a split in the legislature party, the contention of the petitioners about the number of members required for calculating 1/3rd of the members in the legislature party in Tamil Nadu and Pondicherry put together has no relevance and therefore I do not go into it."
The Speaker further observed that though the three members stated that they had not voluntarily given up their membership of the original political party, they had already intimated the Speaker on 20 September 2000 that they had constituted a separate group. The expression 'voluntarily given up his membership' is not synonymous with 'resignation' and have a wider connection. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of formal resignation from membership, an inference can be drawn from the conduct of a member that he has voluntarily given up his membership

of the political party to which he belongs. In this case, their constituting a separate group amounted to voluntarily giving up their membership, there being no valid split in the original political party;

(3) On the issue at (iii) above, the petition complied with the requirements of Rule 6 of the members of Pondicherry Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986.

Finally, the Speaker passed the following order:

I, A.V. Subramanian, Speaker of the Pondicherry Legislative Assembly, in exercise of the powers conferred upon me by the Tenth Schedule to the Constitution of India as incorporated by section 14-A of the Government Union Territories Act, 1963 and the members of the Pondicherry Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, hereby declare that Tvl. Rathinam @ Manohar, K. Rajasekaran and A. Elumalai who were elected as members of the Legislative Assembly from Oupalam, Mannadipet and Ossoudu constituencies, respectively have incurred disqualification for being members of the Pondicherry Legislative Assembly in terms of Paragraph 2(1) (a) of the said Schedule. Accordingly, they have ceased to be members of Pondicherry Legislative Assembly with immediate effect and their seats shall thereupon fall vacant.

Consequential Action

Copies of the order were forwarded to the petitioners and the members in relation to whom the petitions were made.

The decision of the Speaker was published in the Assembly Bulletin Part II dated 25 December 2000 and notified in the State Gazette.

Subsequent Development

The decision of the Speaker was challenged in the High Court of Judicature, Chennai. The High Court set aside the decision of the Speaker *vide* its judgement/ order dated 8 February 2001.

Puducherry Makkal Congress Party Merger Case (Pondicherry LA, 2001)

Claim of merger of Puducherry Makkal Congress Party with Indian National Congress – Recognised – Members treated as belonging to Indian National Congress.

Facts of the Case

On 5 November 2001, the Speaker, Shri M.D.R. Ramachandharan received a letter from Shri K. Lakshminarayanan, MLA, President of Puducherry Makkal Congress Party and Leader of the Puducherry Makkal Congress Legislature Party in the Pondicherry Legislative Assembly. In the letter, he had intimated that Puducherry Makkal Congress Party having four members had completely merged with the Indian National Congress Party as per the resolution adopted unanimously in the General Body meeting of Puducherry Makkal Congress Party having four members held in Party's Headquarters situated at No.76, Calve Subbaraya Chettiar Street, Pondicherry on 31 October 2001. He had requested the Speaker to make necessary seating arrangements in the House for the members of Puducherry Makkal Congress Legislature Party. Alongwith the said letter there was another intimation jointly signed by all the four members of Puducherry Makkal Congress Party stating that in the above meeting, it was unanimously resolved to give whole hearted consent to the merger of the Puducherry Makkal Congress Political Party with the Indian National Congress Party and also that the members of the Legislative Assembly should join the Indian National Congress Party.

On 7 November 2001, Shri N. Rangasamy, Chief Minister and Leader of Congress Legislature Party and Shri V. Narayansamy, President, Pondicherry State Congress Committee gave the Speaker in person a letter jointly signed by them in which they had informed that a copy of the resolution dated 31 October 2001 for the merger of Puducherry Makkal Congress with the Indian National Congress was received and was unanimously accepted.

Decision of the Speaker

Taking into consideration the facts and circumstances of the case, the Speaker decided the following *vide* his order dated 9 November 2001:

"Having been satisfied that the conditions required for merger as stipulated in sub-paragraph (2) of Paragraph 4 of Tenth Schedule are fully met in accordance with the provisions of the Tenth Schedule to the Constitution of India and Members of the Pondicherry Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, I hereby decide and order that the four members of Puducherry Makkal Congress Legislature Party in the Pondicherry Legislative Assembly namely, Tvl. K. Lakshminarayanan, P. Rajavelu, R. Radhakrishnan and A. Elumalai who by themselves constitute the entire Puducherry Makkal Congress Legislature Party have merged with the Indian National Congress Legislature Party in Pondicherry Assembly with effect from 31 October 2001 and have become members of this political party and the Indian National Congress shall be deemed to be the political party to which they belong with effect from 31 October 2001 for the purpose of sub-paragraph (1) of paragraph 2 of the Tenth Schedule and to be their original political party for the purpose of Paragraph 4 of the Tenth Schedule."

Consequential Action

All the members of Puducherry Makkal Congress Legislature Party were thereafter treated as members of the Indian National Congress Party.

Tamil Maanila Congress (Moopanar) Party Merger Case (Pondicherry LA, 2002)

Claim of merger of Tamil Maanila Congress (Moopanar) Party with Indian National Congress Party – Recognised – Members treated as belonging to Indian National Congress.

Facts of the Case

On 4 September 2002, Shri N. Rangasamy, Chief Minister and Leader of Indian National Congress Legislature Party in Pondicherry Legislative Assembly, Shri V. Narayanasamy, President, Pondicherry Pradesh Congress Committee of Indian National Congress and Shri A. Namassivayam, Minister and MLA elected from Tamil Maanila Congress (Moopanar) Party met the Speaker, Shri MDR Ramachandharan in his chamber and presented separate letters. They had also handed over to him a letter addressed to the Speaker from Shri G.K. Vasan, President of former Tamil Maanila Congress (Moopanar) Party, Chennai, alongwith a copy of the resolution passed in the General Council Meeting of Tamil Maanila Congress (Moopanar) Party held on 8 July 2002 at Chennai.

Shri N. Rangasamy, Leader of the Indian National Congress Legislature Party in the Pondicherry Legislative Assembly had in his letter stated that a resolution was adopted unanimously in the General Council Meeting of Tamil Maanila Congress (Moopanar) Party which was held on 8 July, 2002 at Chennai under the Presidentship of Shri G.K. Vasan, then President of Tamil Maanila Congress (Moopanar) Party that Tamil Maanila Congress (Moopanar) Party would be merged with Indian National Congress Party. The merger took place on 14 August 2002 at Madurai. Following the merger of Tamil Maanila Congress (Moopanar) Party with Indian National Congress Party, Shri A. Namassivayam, MLA who was elected under Tamil Maanila Congress (Moopanar) Party ticket had become a member of Indian National Congress Party. In the light of the above mentioned reasons, he had requested the Speaker to recognise Shri A. Namassivayam as a member of Indian National Congress in the Pondicherry Legislative Assembly.

Meanwhile Shri V. Narayanasamy, President, Pondicherry Pradesh Congress Committee of Indian National Congress also confirmed the merger of Tamil Maanila Congress (Moopanar) Party with the Indian National Congress Party.

Shri A. Namassivayam in his letter had stated that he had been elected from Oulgaret Assembly Constituency to the Eleventh Assembly of Pondicherry Legislative Assembly under the party ticket of Tamil Maanila Congress (Moopanar). He had also stated that he had merged with the Indian National Congress when the merger of Tamil Maanila Congress (Moopanar) Party with Indian National Congress Party took place on 14 August 2002 as per the unanimous resolution adopted by the General Council of Tamil Maanila Congress (Moopanar) Party on 8 July 2002 at Chennai. He had, therefore, requested to recognise him as a member of Indian National Congress in Pondicherry Legislative Assembly.

Decision of the Speaker

After carefully examining all the above documents and taking into consideration the facts and circumstances, the Speaker, on 5 September 2002, decided the following:

> Having been satisfied that the Tamil Maanila Congress (Moopanar) Political Party has merged with Indian National Congress Political Party and the condition required for merger as stipulated in sub paragraph (2) of paragraph 4 of Tenth Schedule are fully met in accordance with the provisions of the Tenth Schedule to the Constitution of India and the members of the Pondicherry Legislative Assembly (Disqualification on ground of Defection) Rules, 1986, I hereby decide and order that the member of Tamil Maanila Congress (Moopanar) Legislature Party in the Pondicherry Legislative Assembly namely, Thiru A. Namassivayam has become the member of Indian National Congress Legislature Party in Pondicherry Assembly with effect from the date of merger, i.e. 14 August 2002, for the purpose of sub-paragraph 2 of the Tenth Schedule and to be his original political party for the purpose of Paragraph 4 of Tenth Schedule.

Consequential Action

Shri A. Namassivayam was treated as the member of the Indian National Congress Legislature Party.

B. POSITION AT A GLANCE

Statements

Lok Sabha

Cases of Disqualification

S.1

Sl.No.	Lok Sabha (year)	Date when petition given	Name(s) of Petitioner(s)	Name(s) of Respondent(s)	Grounds	Decision
	Eighth Lok Sabha					
1	1987	6.4.1987	Sh. K.P. Unnikrishnan	*Sarvashri* Surdarshan Das & Sahabrao Patil Dongarkar	Voluntarily giving up membership of member's Party {Congress (S)}	Dismissed by Speaker (Dr. Bal Ram Jakhar) *vide* decision dated 9.9.1987
2.	1987-88	21.7.1987	Sh. Ram Pyare Panikha	Sh. Lalduhoma	Voluntarily giving up membership of the member's Party (Cong-I)	Allowed by Speaker (Dr. Bal Ram Jakhar) *vide* decision dt. 24.11.1988. Respondent disqualified.
3.	1988	10.12.1988	Mohd. Mahfooz Ali Khan	Sh. Hardwari Lal	Voluntarily giving up membership of member's Party (Lok Dal)	Rendered infructuous due to dissolution of 8th Lok Sabha on 27.11.1989
	Ninth Lok Sabha					
4.	1990-91	(a) 7.11.1990 (b) 8.11.1990	Sh. Santosh Bhartiya Sh. Satya Pal Malik	Smt. Usha Sinha and 29 other members (This includes Shri Basavraj Patil)	Violation of Party whip at the time of voting on Confidence Motion in V.P. Singh's Govt. on 7.11.1990	Speaker (Shri Rabi Ray) *vide* his decision dated 11.01.1991 disqualified *Sarvashri* Basavraj Patil, (along with 7 other members petitions against whom were given by Shri Sukhdeo Paswan).

		(c) 23.11.1990	Sh. Sukdeo Paswan (7 separate petitions)	*Sarvashri* Hemendra Singh Banera Vidyacharan Shukla, Sarwar Hussain, Bhagey Gobardhan, Devenanda Amat, Manwendra Singh, Bengali Singh		Speaker dismissed reamining 29 petitions. Speaker *vide* his decision dated 11.01.1991 disqualified *Sarvashri* Hemendra Singh Banera, Vidyacharan Shukla, Sarwar Hussain, Bhagey Gobardhan, Devenanda Amat and Dr. Bengali Singh (and Shri Basavraj Patil) The petition against Shri Manwendra Singh was dismissed.
		(d) 14.12.90	Sh. Devendra Prasad Yadav	Dr. Shakeelur Rehman	Voluntarily giving up membership of member's Party (Janata Dal)	Dr. Shakeelur Rehman was disqualified from member-ship of Lok Sabha in terms of Para 2(1)(a) of Tenth Schedule.
5.	1991	2.1.1991	Sh R Muttiah	Dr K. Kalimuthu	Voluntarily giving up membership of member's Party (AIADMK)	Rendered infructuous due to dissolution of 9 Lok Sabha on 13.3.1991
	Tenth Lok Sabha					
6.	1992-93	(a) 11.8.1992	Sh. Vishwanath Pratap Singh (4 separate petitions)	*Sarvashri* Ram Sundar Das G.C. Munda G.M. Khan Rambadan	Violation of Party whip at the time of voting on No-confidence motion on 17.7.1992	Allowed *vide* Speaker (Sh. Shivraj V. Patil's) decision dated 1.6.1993. Respondents disqualified.

						Stayed by Delhi High Court *vide* their order dt. 2.7.1993. Case was pending in the Court till dissolution of 10th Lok Sabha. Consequently members continued as members of 10th Lok Sabha for its entire duration.
		(b) 22.8.1992	Sh. Vishwanath Pratap Singh (8 separate petitions)	*Sarvashri* Ram Lakhan Singh Yadav A.C. Das Suryanarayan Yadav Ram Sharan Yadav Roshan Lal Arjun Singh Yadav Abhay Pratap Singh Upendra NathVerma	Voluntarily giving up membership of Janata Dal	Dismissed *vide* Speaker's decision dt. 1.6.1993.
		(c) 3.10.1992	Sh. Srikanta Jena (2 Composite Petitions)	*Sarvashri* Ajit Singh Rasheed Masood Shri Harpal Panwar Satyapal Singh Yadav Rajnath Sonkar Shastri Ramnihore Rai Ram Awadh Shivsharan Verma	Voluntarily giving up membership of Janata Dal.	Dismissed *vide* Speaker's decision dt. 1.6.1993.

7.	1992	29.7.1992	Sh.Shailendra Mahto (2 separate petitions)	*Sarvashri* Krishna Marandi & Rajkishore Mahto	Violation of Party whip	Dismissed by Speaker (Sh. Shivraj V. Patil) on 2.12.1992 on the ground of non-compliance of provisions of Anti-Defection Rules.
8.	1993	26.8.1993	Shri Ajit Singh (Composite petition)	*Sarvashri* Ramlakhan Singh Yadav Ram Sharan Yadav Abhay Pratap Singh Roshan Lal Gulam Mohd Khan Anadi Charan Das Govinda Chanda Munda	(a) Violation of Party Whip at the time of voting on No-Confidence Motion against Shri P.V. Narasimha Rao Govt. on 28.7.1993 (with regard to 6 members excluding Shri Munda) (b) Voluntarily giving up membership of member's party Janata Dal (A) (against all seven members)	Dismissed by Speaker (Sh. Shivraj V. Patil) *vide* his decision dt. 3.1.1996
	Eleventh Lok Sabha					
				- No Cases -		
	Twelfth Lok Sabha					
9.	1999	15.4.1999	Sh. Omak Apang	Sh. Wangcha Rajkumar	Abstaining from voting on Resolution with regard to proclamation of President's Rule in Bihar.	Dismissed by Speaker (Sh. G.M.C. Balayogi) on 29.4.1999 on ground of non-compliance of provisions of Anti-Defection Rules.
10.	1999	22.4.1999	Sh. K. Yerrannaidu	Sh. S. Vijayarama Raju	Voluntarily giving up membership of member's Party (TDP)	Rendered infructuous due to dissolution of 12th Lok Sabha on 26.4.1999.

11.	1999	22.4.1999	Sh. Satya Pal Jain	Prof. Saifudin Soz	Violation of Party Whip at the time of voting on 17.4.1999 on the Confidence Motion in A.B. Vajpayee Government.	Rendered infructuous due to dissolution of 12th Lok Sabha on 26.4.1999.
	Thirteenth Lok Sabha					
12.	2001-2002	7.8.2001	Dr. Raghuvansh Prasad Singh	*Sarvashri* Mohd. Anwarul Haque & Sukdeo Paswan	Voluntarily giving up membership of member's Party (RJD).	Dismissed by Speaker (Sh. G.M.C. Balayogi) *vide* decision dt. 6.1.2002
13.	2002-2004	30.4.2002	Km. Mamata Banerjee	Sh. Ajit Kumar Panja	Voting against Party directive at the time of voting on POTO Bill, 2002 during joint sitting of both Houses held on 26.3.2002	Petitioner subsequently intimated that she did not wish to press her petition. While matter was pending consideration of Speaker, 13th Lok Sabha was dissolved on 6.2.2004. Petition stood lapsed.
14.	2003-2004	4.4.2003	Sh. Rupchand Pal	Prof. R.R. Pramanik	Voluntarily giving up membership of member's Party [CPI(M)].	Referred to Committee of Privileges by the Speaker on 13.5.2003. Rendered infructuous due to dissolution of 13th Lok Sabha on 6.2.2004.
15.	2003-2004	21.7.2003	Sh. Vijay Kumar Malhotra	Sh. Vijay Sankeshwar	Voluntarily giving up membership of member's Party (BJP)	Respondent had tendered resignation from membership of Lok Sabha before petition was filed against him. Respondent's resignation accepted by

						Speaker (Sh. Manohar Joshi) on 29.1.2004. Consequently, petition was rendered infructuous.
16	2003-2004	28.11.2003	Sh. Vijay Kumar Malhotra	Sh. P.R. Khunte	Voluntarily giving up membership of member's Party (BJP)	Rendered infructuous due to dissolution of 13th Lok Sabha on 6.2.2004.

Cases of Split S.2

Sl.No	Lok Sabha (Year)	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of breakaway/ splitaway group	Decision	Remarks, if any.
	Eighth Lok Sabha							
1	1986-87	November 1986	Shiromani Akali Dal	*Sarvashri* Charanjit Singh Atwal, Charanjit Singh Walia & Tarlochan Singh Tur, MPs	Split in Shiromani Akali Dal	Akali Dal (Badal) & Akali Dal (Barnala)	Allowed by Speaker (Dr. Bal Ram Jakhar) on 13.11.1986	As a result of split, Shiromani Akali Dal ceased to exist in Lok Sabha and consequently Akali Dal (Badal) & AkaliDal (Barnala) came into existence in Lok Sabha.
2	1988	March 1988	AIADMK	Sh P. Kolandaivelu & three other members	Split in AIADMK	AIADMK-I & AIADMK-II	Allowed by Speaker (Dr Bal Ram Jakhar) on 28 4 1988	As a result of split, AIADMK ceased to exist in Lok Sabha. Consequently AIADMK-I & AIADMK-II came into existence in Lok Sabha. Subsequently, merger of AIADMK-I with AIADMK-II claimed. The matter, however, remained inconclusive due to dissolution of 8th Lok Sabha.
	Ninth Lok Sabha							
3.	1990-91	6.11.1990	Janata Dal	*Sarvashri*	Split in Janata	Janata Dal (S)	Allowed by	Petitions for

				Chandra Shekhar, Devi Lal & Hukum Dev Narayan Yadav, MPs	Dal and request for accord of recognition to splitaway group viz. Janata Dal (S).		Speaker (Sh. Rabi Ray) on 14.1.1999	disqualification filed against members claiming split. Speaker (9th Lok Sabha) in his decision dt. 14.1.99 (a) recognized split away group *viz.* Janata Dal (S) comprising 54 members of Janata Dal, (b) disqualified 8 members (For details see Chapter IV
	Tenth Lok Sabha							
4	1992	30.1.1992	Shiv Sena	*Sarvashri* Ashokrao Deshmukh & Vilasrao Gundewar, MPs	Request for recognition to splitaway group *viz.* Shiv Sena (B) and separate seating to members of this group	Shiv Sena (B)	Allowed by Speaker (Sh Shivraj V Patil) on 4.3.1991	Subsequently Shiv Sena (B) merged with Indian National Congress.
5.	1992	10.3.1992	Telugu Desam Party	Sh Bh. Vijayakumar Raju, MP	Request for recognition to the splitaway group and separate seating to its members in Lok Sabha	Telugu Desam Party (V)	Allowed by Speaker (Sh. Shivraj V Patil) on 12.3.1992	Subsequently Telugu Desam Party (V) merged with Indian National Congress
6.	1992-93	29.9.1992	Janata Party	*Sarvashri* Uday Pratap Singh, Chhotey Singh Yadav and Ram Sagar, MPs	Split in Janata Party and request for recognition to splitaway Group *viz.* Samajwadi Party and separate seating to its members.	Samajwadi Party	Allowed by Speaker (Sh. Shivraj V. Patil) on 9.1.1993.	

7.	1992-9	7.8.1992	Janata Dal	*Sarvashri* Ramlakhan Yadav, Ajit Singh and 18 other members	Split in Janata Dal & request for recognition to splitaway Group and separate sitting to its members	Janata Dal (A)	Allowed by Speaker (Sh. Shivraj V. Patil) on 1.6.1993	Petitions for disqualification filed against members claiming split.Speaker (Shri Shivraj V. Patil) in his decision dt. 1.6.93 (a) recognized splitaway group viz. Janata Dal (A) comprising of Sh. Ajit Singh & 15 other members ; (b) disqualified four members. (For details see Chapter IV
8.	1994	21.6.1994	Janata Dal	Sh Md. Yunus Saleem and 13 other members	Split in Janata Dal and request for separate seating and other facilities to function as a political party in the House.	Samata Party	Allowed by Speaker (Sh. Shivraj V. Patil) on 20.7.1994.	14 members of splitaway group allotted separate seats in Lok Sabha w.e.f. 20.7.1994. Consequent upon recognition of group of 14 members by ElectionCommission as Samata Party, it was decided to treat this split away group in Lok Sabha as Samata Party
	Eleventh Lok Sabha							
9.	1996	2.8.1996	Samata Party	*Sarvashri* Chandra Shekhar, Ram Bahadur Singh & Bhakta Charan Das, MPs	Split in Samata Party and request for accord of recognition to this Group and other appropriate action.	Samajwadi Janata Party (Rashtriya)	Allowed by Speaker (Sh. P.A. Sangma) on 12.9.1996	Announcement made by Speaker, Shri P.A. Sangma on12.9.1996 re. his decision to seat separately 3 members of

								faction of Samata Party as members belonging to Samajwadi Janata Party (Rashtriya) in Lok Sabha for functional purposes
10	1997	5.7.1997	Janata Dal	Prof. Ajit Kumar Mehta & 15 other members.	Split in Janata Dal and request for allocation of separate seating to said 16 members and provision of other facilities to function as a political party in the House	Rashtriya Janata Dal	Allowed by Speaker (Sh. P.A. Sangma) on 28.8.1997.	
	Twelfth Lok Sabha							
11	1999	12.1.1999	Arunachal Congress	Sh. Wangcha Rajkumar, MP	Split in Arunachal Congress and request for accord of recognition to split away group	Arunachal Congress (M)	Allowed by Speaker (Sh. G.M.C. Balayogi) on 31.3.1999	Subsequently, Sh. Omak Apang, MP gave petition for disqualification against Sh. Wangcha Rajkumar. Since annexures to petition were not signed and verified as required under Anti-Defection Rules, Speaker (Shri G.M.C. Balayogi) dismissed the petition under Rule 7(2) of the Anti-Defection Rules.

12.	1999	17.4.1999	National Conference	Prof. Saifuddin Soz, MP	Split in National Conference and recognition to split away group *viz.* National Conference (S)	—	—	Comments were called for from other two members of National Conference. In the meantime, Sh. Satya Pal Jain, MP filed a petition for disqualification against Prof. Soz. Before receipt of comments of other members of National Conference on claim for split and process of Sh. Jain's petition, 12th Lok Sabha was dissolved. Hence, both matters lapsed.
	Thir-teenth Lok Sabha							
13.	2000	21.1.2000	Janata Dal (United)(First)	Sh. George Fernandes and ten other members.	Intimation re. decision by members not to proceed with merger with JD(U) and to break away from the party.	Janata Dal (Samata)	Allowed by Speaker (Sh. G.M.C. Balayogi) on 23.7.2000	Subsequently, Sh. George Fernandes and 11 other members of Janata Dal (Samata) *vide* their joint letter dated 18.5.2002 intimated Speaker that on 18.5.2002 Janata Dal (Samata) had resolved to formally merge with Samata

								Party in Lok Sabha.On examination, the following points emerged:-(1) No party by name 'Samata Party existed in Lok Sabha.(2) The case related to request by members of Janata Dal (S) to rename their party as Samata Party.(3) There would be no implications under the Tenth Schedule if request of members for renaming was acceded to Accordingly, on 4 9 2002 Speaker, 13th Lok Sabha (Shri Manohar Joshi) decided to treat to Sh George Fernandes and others as belonging to Samata Party in Lok Sabha.
14.	2000	24.11.2000	Janata Dal (United) (Second)	Sh Ram Vilas Paswan and three other members	Split in Janata Dal (U) and request for recoguition to split away group and separate seating for its members	Lok Jan Shakti Party	Allowed by Speaker (Sh. G.M.C. Balayogi) on 15 12 2000	
15	2001	28.4.2001	Rashtriya Janata Dal (RJD)	*Sarvashri* Md. Anwarul Haque, Sukdeo Paswan and Nagmani, MPs	Intimation about split in Rashtriya Janata Dal and formation of	Rashtriya Janata Dal (Democratic)	Allowed by Speaker (Sh. G.M.C. Balayogi) on 30.8.2001	Consequently Rashtriya Janata Dal had a strength of 4 and Rashtriya

					Rashtriya Janata Dal (Democratic)			Janata Dal (Democratic) had strength of 3. Petitions dated 7.8.2001 given by Dr. Raghuvansh Prasad Singh against Md. Anwarul Haque and Sukdeo Paswan, MPs were dismissed by Speaker (Sh. G.M.C. Balayogi) *vide* his decision dated 3.1.2002.
16.	2001	5.7.2001	Kerala Cong (M)	Shri P.C. Thomas[(one member of KC(M)]	Intimation about split in KC(M) political party. Sh Thomas *vide* his subsequent communication dt. 17.7.2001 requested that his group be known as KC(T).	Member *vide* further communi-cation also dt 17.7.2001 intimated re. merger of KC (T) with Indian Federal Democratic Party (IFDP). Request made to be treated as beloning to IFDP in Lok Sabha	Allowed by Speaker (Shri G.M.C. Balayogi) on 30.8.2001	
17.	2002	22.3.2002	Rashtriya Lok Dal	Shri Amir Alam Khan, MP	Intimation about decision to breakaway from Rashtriya Janata Dal and formation of Lok Dal (Secular)	Lok Dal Secular	Allowed by Speaker (Shri Manohar Joshi) on 25.7.2002	

18.	2002	13.8.2002	Lok Jan Shakti Party	Capt. Jai Narayan Prasad Nishad and Shri Ramesh C. Jigajinagi, MPs	Intimation about their decision to breakaway from Lok Jan Shakti Party and formation of Janata Dal (JP). Janata Dal (JP)	Janata Dal (JP)	Allowed by Speaker (Shri Manohar Joshi) on 17.10.2002	
19.	2003-2004	23.4.2004	Biju Janata Dal	*Sarvashri* Jagannath Mallick, Dr. Prasanna Kumar Patasanni & Sh. Prabhat Samantaray, Kumudini Patnaik, MPs	Intimation regarding split in Biju Janata Dal and request that their splitaway group be known as 'Janshakti Orissa'	—	No decision could be taken due to dissolution of 13 th Lok Sabha.	Subsequently one of the claimant of split *viz.* Sh Jagannath Mallick, following revocation of his expulsion from Party by Party Leadership intimated *vide* letter dated 17.7.2003 that he withdrew his claim for split. Opinion of A.G. was sought on legal issues involved. In the meantime, 13th Lok Sabha dissolved on 6.2.2004 Matter lapsed
20.	2003	22.8.2003	Janata Dal (United) (Third)	*Sarvashri* Devendra Prasad Yadav and Shashi Kumar, MPs	Intimation re. Split in Janata Dal (U) and formation of Janata Dal (U) Democratic.	Janata Dal (U) Democratic	Allowed by Speaker (Sh Manohar Joshi) on 10.12.2003	

21.	2003-2004	1.12.2003	Rashtriya Janata Dal (Democratic)	Sh. Sukhdeo Paswan, MPs	Split in Rashtriya Janata Dal (Democratic) and formation of Simanchal Vikas Party	Simanchal Vikas Party	Allowed by Speaker (Shri Manohar Joshi) on 18.12.2003.	
22.	2003-2004	22.12.2003	Rashtriya Janata Dal (Democratic) (Second)	Sh. Nagmani, MP	Split in Rashtriya Janata Dal (Democratic) and formation of Shoshit Kranti Dal	Shoshit Kranti Dal	Allowed by Speaker (Shri Manohar Joshi) on 22.12.2003	Consequently Rashtriya Janata Dal (Democratic) and Shoshit Kranti Dal had a strength of 1 each in Lok Sabha

Cases of Merger S.3

Sl.No.	Lok Sabha (year)	Date when claim for merger made	Claim of merger made by	Name of Party with which merger sought	Decision	Remarks, if any
	Eighth Lok Sabha					
1.	1986-87	3.12.1986	*Sarvashri* Sudarshan Das and Sahabrao Patil Dangaonkar, MPs of Congress (S) Legislature Party consisting of 4 members in the House	Congress (I)	Allowed by Speaker (Dr. Bal Ram Jakhar) on 6.4.1987	Consequent upon expulsion of two members *viz.Sarvashri* K.P Unnikrishnan and V. Kishore Chandra S. Deo, Speaker decided to treat them as unattached members in Lok Sabha. Consequently strength of Congress (S) in Lok Sabha was reduced to 2. Petitions under the Tenth Schedule were given by Sh. K.P Unnikrishnan against two claimants of merger. The same were disallowed by Speaker *vide* his decision dated 9.9.1987.
2.	1989	10.3.1989	Prof. Madhu Dandavate, MP and Leader of Janata Party intimated	Janata Dal	Allowed by Speaker (Dr. Bal Ram Jakhar) on 11.4.1989	In this case two legislature parties *viz.* Janata Party and Lok Dal merged to form a new party *viz.*

			about merger of Janata Party and Lok Dal			Janata Dal. This intimation was given to Speaker, Lok Sabha by Prof. Madhu Dandavate. On comments being sought, Shri Mohd. Mahfooz Ali Khan, MP and Leader, Lok Dal confirmed the merger.The sole exception was Shri Syed Shahabuddin, M.P. belonging to Janata Party who decided not to join Janata Dal.Speaker made announcement regarding formation of Janata Dal in Lok Sabha on 11.4.1989. Prof. Dandavate, Leader of newly formed Janata Dal, was intimated in writing the same day.
	Tenth Lok Sabha					
3.	1992	6.3.1992	*Sarvashri* Ashokrao Deshmukh and Vilasrao of Shiv Sena (B) consisting of two members in the House.	Congress (I)	Allowed by Speaker (Shri Shivraj V. Patil) on 11.3.1992	
4.	1992	20.8.1992	Shri Bh. Vijaya Kumar Raju, MP and six other members of	Congress (I)	Allowed by Speaker (Shri Shivraj V. Patil) on 27.8.1992	

			Telugu Desam (V) consisting of 7 members in the House.			
5	1993	30.12.1993	Shri Ajit Singh and 9 other members of Janata Dal (A) consisting of 20 members in the House	Congress (I)	Allowed by Speaker (Shri Shivraj V. Patil) on 30.12.1993	Consequent upon split in Janata Dal, Janata Dal (A) with a strength of 20 members with Sh. Ajit Singh as its leader came into existence in Lok Sabha on 28.7.1993. 7 members of JD(A) claimed split in JD(A). All these 7 members were seated separately in Lok Sabha for functional purposes on 29.9.1993. Thereafter petitions were given against all the 7 members who claimed split While the petitions were pending consideration of the Speaker, 10 out of remaining 13 members of JD(A) [Shri Ajit Singh and nine other members of JD(A)] claimed merger with INC. Shri Ajit Singh did not pursue his petitions.

6.	1992	29.7.1992	*Shri Imchalemba lone member of Nagaland People's Council (Progressive) in the House	Congress (I)	Allowed by Speaker (Shri Shivraj V. Patil) on 29.4.1992	
7.	1992	10.7.1992	Shri N.J. Rathava, lone member of Janata Dal (G) in the House	Congress (I)	Allowed by Speaker (Shri Shivraj V. Patil) on 13.7.1992	
8.	1993	26.11.1993	Shri Jangbir Singh, lone member of Haryana Vikas Party in House	Congress (I)	Allowed by Speaker (Shri Shivraj V. Patil)	
	Eleventh Lok Sabha					
9.	1996	6.11.1996	Shri Madhavrao Scindia, lone member of Madhya Pradesh Vikas Congress in House	INC	Allowed by Speaker (Shri P.A. Sangma) on 27.12.1996	
10	1996	17.12.1996	Shri S. Bangarappa, lone member of Karnataka Congress Party	INC	Allowed by Speaker (Shri P.A. Sangma) on 19.12.1996	

* Shri Imchalemba was the lone member belonging to Nagaland People's Council (NPC) at the time of constitution of 10th Lok Sabha. Consequent upon split in NPC in April 1992 his party affiliation was changed to NPC (P).

11.	1998	24.2.1997	Shri Narayan Dutt Tiwari of All India Indira Congress (Tiwari) AIIC(T) consisting of 4 members in the House	INC	Not permitted by Speaker	AIIC(T) had strength of 4 members in Lok Sabha. Shri Narayan Dutt Tiwari intimated about 'reintegration' of AIIC(T) with Indian National Congress. He requested that he and Shri Tilak Raj Singh another member of AIIC(T) may be allocated seats in Cong(I) bloc of seats. Similar request was subsequently made by Sh. Tilak Raj Singh. On examination of matter, a view was taken that claimed merger was not sustainable under provisions of para 4 of Tenth Schedule. Hence, members requested for allocation of separate seats in INC bloc of seats was not acceded to. Members were however allotted seats in bloc adjacent to INC bloc of seats.
	Twelfth Lok Sabha			- No Cases -		

	Thir-teenth Lok Sabha					
12.	2002	1.2.2002	Shri Thirunavu-kkarasar, lone member of MGR ADMK in the House.	BJP	Allowed by *Deputy Speaker (Shri P.M. Sayeed) on 14.3.2002	
13.	2002	18.11.2002	Shri Th. Chaoba Singh, lone member of Manipur State Congress Party in the House.	BJP	Allowed by Speaker (Shri Manohar Joshi) on 29.11.2002	

* Shri P.M. Sayeed, Deputy Speaker was looking after the functions of Speaker (13th Lok Sabha) at that point of time.

Cases of nominated members joining political party **S.4**

Sl.No.	Lok Sabha (year)	Name of nominated member	Date when intimation of joining the party received	Name of Party joined	Decision	Remarks, if any
	Twelfth Lok Sabha					
1.	1998	Dr. (Smt.) Beatrix D'Souza	31.3.1998	Samata Party	After taking into account the legal position, Dr. (Smt.) Beatrix D'Souza was treated as a member of Samata Party *w.e.f.* 9.6.1998 with the approval of Speaker (Sh. G.M.C. Balayogi).	Shri George Fernandes, MP and Leader of Samata Party in Lok Sabha *vide* his letter dated 4.6.1998 intimated that Dr (Smt.) Beatrix D'Souza had been accepted as a member of Samata Party.
	Thir-teenth Lok Sabha					
2.	1999	Dr. (Smt.) Beatrix D'Souza	29.11.1999	Janata Dal (United)*	After taking account the legal position, Dr. (Smt.) Beatrix D'Souza was treated as a member of Janata Dal (United) *w.e.f.* 16.12.1999 with the	Shri George Fernandes, MP and Leader of Janata Dal (United) who was addressed in the matter, *vide* his letter dated 6.12.1999 confirmed Dr. (Smt.) Beatrix

* Consequent upon split in Janata Dal (U) in 2000, Janata Dal (Samata) with Shri George Fernandes and 11 other members (including Dr. D'Souza) came into being in Lok Sabha Subsequently on an intimation received from Shri George Fernandes that Janata Dal (Samata) resolved to merge with Samata Party, Janata Dal (Samata) was renamed as Samata Party in Lok Sabha w.e.f. 4.9.2002.

					approval of Speaker (Sh. G.M.C. Balayogi).	D'Souza's admission to JD(U) in Lok Sabha.
3.	1999	Shri Denzil B. Atkinson	29.11.1999	BJP	After taking account the legal position, Shri Denzil B. Atkinson was treated as a member of BJP w.e.f. 21.12.1999 with the approval of Speaker (Sh. G.M.C. Balayogi).	Minister of Parliamentary Affairs *vide* his letter dated 17.12.1999 who was addressed in the matter, confirmed admission of Shri Atkinson to BJP *w.e.f.* 29.11.1999.
	Four-teenth Lok Sabha					
4.	2004	Smt. Ingrid Mcleod	8.12.2004	INC	After taking into account the legal position,Smt. Ingrid Mchleod was treated as a member of INC *w.e.f.* 8.12.2004 with the approval of Speaker.(Shri Somnath chatterjee).	Shri Pranab Mukherjee, MP and Leader of INC in Lok Sabha and Minister of Parliamentary Affairs *vide* their letters dated 13 & 14 December, 2004 confirmed admission of Smt. Mcleod of INC in Lok Sabha.
5.	2004	Shri Francis Fanthome	9.12.2004	INC	After taking into account the legal position, Shri Francis Fanthome was treated as a member of INC *w.e.f.* 9.12.2004 with the approval of Speaker (Shri Somnath Chatterjee).	Shri Pranab Mukherjee, MP and Leader of INC in Lok Sabha and Minister of Parliamentary Affairs *vide* their letters dated 13 & 14 December, 2004 confirmed admission of Shri Francis Fanthome of INC in Lok Sabha.

Rajya Sabha

Cases of Disqualification S.5

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s) claimed	Name(s) of Respondents(s)	Grounds /request made	Decision	Remarks, if any.
1.	1989	28.4.1989	Shri V. Narayana-swamy	Shri Mufti Mohamad Sayeed	Voluntarily giving up membership of original party, i.e. Congress (I)	Allowed by Chairman (Dr Shanker Dayal Sharma) on 28.7.1989. Respondent disqualified.	-
2.	1989	27.7.1989	Shri Pawan Kumar Bansal	Shri Satya Pal Malik	Voluntarily giving up membership of original party, i.e. Congress (I)	Allowed by Chairman (Dr Shanker Dayal Sharma) on 14.9.1989 Respondent disqualified.	-

Cases of Split S.6

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1988	24.2.1988	AIADMK	Shri G Swaminathan	Split in AIADMK	AIADMK-II Chairman (Shri Shanker Dayal Sharma)	Allowed by	-
2.	1990	9.11.1990	Janata Dal	Shri Yashwant Sinha and fourteen other members	Split in Janata Dal	Janata Dal (Socialist)	Allowed by Chairman (Dr Shanker Dayal Sharma)	-
3	1991	12.6.1991	Asom Gana Parishad	Smt. Bijoya Chakravarty	Split in Asom Gana Parishad	Natun Asom Gana Parishad	Allowed by Chairman (Dr Shanker Dayal Sharma) on 28.6.1991.	-

4.	1992	29.9.1992	Janata Party	Shri Ram Gopal Yadav	Split in Janata Dal	Samajwadi Party	Allowed by Chairman (Shri K.R. Narayanan)	-
5.	1994	3.4.1994	Janata Dal (Samajwadi)	*Sarvashri* Ashok Kumar Sen, Sanjay Singh and Basant Kumar Das	Split in Janata Dal (Samajwadi)	Rashtriya Janata Dal	Allowed by Chairman (Shri K.R. Narayanan) on 5.5.1994.	-
6	1994	26.6.1994	Telugu Desam Party	Smt. Renuka Chowdhury	Split in Telugu Desam Party	Telugu Desam Party-II	Allowed by Chairman (Shri K.R. Narayanan)	The decision was challenge-d in the Delhi High Court. The Court dismissed the petition.
7.	1997	22.5.1997	AIADMK	*Saravashri* V. Rajan Chellapa, S. Austin, N. Thangaraj Pandian, N Rajendran, T.M. Venkatachallam, P. Soundararajan and D. Masthan	Split in AIADMK	AIADMK-II	Allowed by Chairman (Shri K.R. Narayanan) on 6.6.1997.	-
8.	1997	5.7.1997	Janata Dal	*Saravashri* Som Pal, Ram Deo Bhandari, Nagmani, Jagadambi Mandal, Naresh Yadav, Prem Chand Gupta, Ranjan Prasad Yadav and Anil Kumar	Split in Janata Dal	Rashtriya Janata Dal	Allowed by Deputy Chairperson Dr. (Smt.) Najma Heptulla on 12.8.1997.	-
9.	1997	26.12.1997	AIADMK-II	*Sarvashri* Soundararajan and N. Thangaraj Pandian	Split in AIADMK-II	AIADMK-III	Allowed by Chairman Shri Krishan Kant on 15.1.1998	-
10.	1998	17.3.1998	Janata Dal	*Sarvashri* Dilip Ray, Rahas Bihari Barik, Narendra Pradhan, Bhagaban Majhi and Smt. Ila Panda	Split in Janata Dal	Biju Janata Dal	Allowed by Chairman (Shri Krishan Kant) on 20.3.1998.	-

Cases of Merger

S.7

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any
1	1986	Congress (S)	9.12.1986	*Sarvashri* A.G. Kulkarni and Suresh Kalmadi	Congress (I)	Allowed by Chairman (Shri R. Venkataraman) on 23.2.1987	-
2	1988	Janata Dal (G)	5.4.1988 & 10.4.1988	Shri K. Gopalan	Lok Dal (A)	Allowed by Chairman (Dr Shanker Dayal Sharma)	Consequent upon merger of Janata (G) with Lok Dal (A), Lok Dal (A) merged with Janata Party
3	1989	Janata Party and Lok Dal	15.3.1989	*Sarvashri* Gurupada -swamy and Virendra Verma	Janata Dal	Allowed by Chairman (Dr Shanker Dayal Sharma) on 11.4.1989	Two separate political parties viz Janata Party and Lok Dal merged to form a new party by the name of the Janata Dal Except Dr (Smt.) Sarojini Mahishi and Shri Subramaniam Swamy of the Janata Party and Shri Ram Awadesh Singh and Shri Shamim Hashmi of the Lok Dal, all other members of both the parties joined Janata Dal.

4.	1990	AIADMK-I	9.4.1990	Shri M. Vincent	AIADMK-II	Allowed by Chairman (Dr Shanker Dayal Sharma)	-
5.	1991	Kerala Congress	19.2.1991	Shri Thomas Kuthiravattom	Janata Dal (S)	Allowed by Chairman (Dr Shanker Dayal Sharma) on 4.3.1991	-
6.	1992	Shiv Sena (Chhagan Bhujbal Group)	22.2.1992	Kumari Chandrika Premji Kenia	Congress (I)	Allowed by Chairman (Dr Shanker Dayal Sharma) on 25.2.1992.	-
7	1992	Natun Asom Gana Parishad	28.7.1992	Shri David Ledger	Congress (I)	Allowed by Deputy Chairperson (Dr. (Smt.) Najma Heptulla) on 28.7.1992.	-
8.	1996	Telugu Desam-II	23.5.1996	Smt. Renuka Chowdhury	Telugu Desam (Naidu)	Allowed by Chairman (Shri K.R. Narayanan) on 23.5.1996.	-
9	1996	Telugu Desam-I	10.7.1996	Shri Yerra Narayana-swamy	Telugu Desam (Naidu)	Allowed by Chairman (Shri K.R. Narayanan) on 15.7.1996.	-
10.	1998	Telugu Desam-I	28.1.1998	Dr. D. Venkateshwar Rao	BJP	Allowed by Chairman (Shri Krishan Kant) on 17.7.1998.	-
11.	1998	AIADMK -III	6.7.1998	Shri R. Margabandu and Shri P. Soundararajan	AIADMK-I	Allowed by Chairman (Shri Krishan Kant) on 8.7.1998.	-
12.	1999	Maharashtra Vikas Aghadi	29.7.1999	Shri Suresh Kalmadi	Indian National Congress	Allowed by Chairman (Shri Krishan Kant) on 3.8.1999.	-
13..	2001	Jharkhand Mukti Morcha	23.10.2001	Shri R.K. Anand	Indian National Congress	Allowed by Chairman (Shri Krishan Kant) on 15.11.2001.	-

Cases of nominated members joining political party S.8

Sl.No.	Year	Name of nominated member	Date when intimation of joining another party received	Name of Party joined	Decision	Remarks, if any
1.	1989	Shri Mohammad Yunus	20.7.1989	INC	Shri Yunus was treated as a member of INC Party w.e.f. 25 7.1989	Took oath on 18.7.1989
2.	1994	Dr M Aram	7.2.1994	INC	Dr. Aram was treated as member of INC Party w.e.f. 16.12.1994	Took oath on 27.8.1993
3.	2004	Shri Dara Singh	5 2.2004	BJP	Treated as member of BJP w.e.f. 10 2.2004	Took oath on 18.9.2003
4	2004	Dr Narayan Singh Manaklao	5 2 2004	BJP	Treated as member of BJP w.e.f. 10.2.2004	Took oath on 2.12.2003
5	2004	Smt Hema Malini	19 2 2004	BJP	Treated as member of BJP w.e.f 26.6.2004	Took oath on 16.12.2003

State Legislatures

Andhra Pradesh Legislative Assembly

Cases of Disqualification S.9

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1987	1987	Shri K.V. Narayana Rao	Shri C. Ramachandra Reddy	Having joined a political party, *i.e.* Indian National Congress despite being elected as an Independent member	Allowed on 07.05.1987 Respondent disqualified.	Sh. Reddy challenged the decision in the High Court which stayed the order of the Speaker. Later consequent upon the dissolution of the Assembly, Court dismissed the petition.

Arunachal Pradesh Legislative Assembly

Cases of Split S.10

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway splitaway group	Decision	Remarks, if any.
1	2003	27.7.2003	Indian National Congress	Shri Kameng Dolo and 37 other members	Split in Indian National Congress	Congress (D)	Allowed on 28.7.2003	-

Cases of Merger S.11

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of party merged with	Decision	Remarks, if any
1	2003	Congress (D) Party	26.8.2003	Shri Kameng Dolo and 30 other members	Bharatiya Janata Party	Allowed on 28.7.2003	-
2	2003	Arunachal Congress Legislature Party	29.8.2003	Shri Gegong Apang	Bharatiya Janata Party	Allowed on 29.8.2003	-
3	2003	Congress (D) Legislature Party	14.11.2003	*Sarvashri* Rajesh Tacho, Kahfa Bengia, Tanga Byaling, Wangki Lowang and Tadic Chije	Bharatiya Janata Party	Allowed on 14.11.2003	-

Assam Legislative Assembly

Cases of Disqualification S.12

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1986	30.1.1986	Shri Santi Ranjan Dasgupta and 14 others	*Sarvashri* Sahidul Alam Chaudhury, Saraj-ul-Haq Chaudhary, Joy Prakash Tewari, Khorsing Engti, Hariram Terang and Samsing Hanse	Independent members joining a political party i.e. Asom Gana Parishad.	Dismissed on 1.4.1986.	-
2	1990	8.8.1990	Shri Abdul Jabbar	*Sarvashri* Santi Ranjan Dasgupta, Afzal-urahman, Maulana Abdul Jalil Ragibi, Shekh Saman Ali, Yusuf Ali Ahmed, Gopi Nath Das and Abdul Hussain Sarkar	Voluntarily giving up membership of original party i.e. United Minorities Front (UMF) Party.	Allowed on 10.10.1990 Respondents disqualified	-

Cases of Split S.13

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway splitaway group	Decision	Remarks, if any.
1.	1996	20.5.1996	All India Indira Congress (Tiwari)	Shri Ali Akbar Miah	Split in All India Indira Congress (Tiwari)	A new Group	Allowed on 14.6.1996.	-

Cases of Merger S.14

Sl No	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1996	New Group of All India Indira Congress (Tiwari)	20.5.1996	Shri Ali Akbar Miah	Asom Gana Parishad	Allowed on 14.6.1996	-
2.	1997	All India Indira Congress (Tiwari)	-	Shri Ismail Hussain	Indian National Congress	Allowed on 19.3.1997	-

Bihar Legislative Assembly

Cases of Disqualification S.15

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1997	30.07.1997	Shri Ganesh Prasad Yadav	Shri Raghvendra Pratap Singh	Violation of Party whip during voting on a Motion of Confidence on 28.07.1997	Dismissed on 14.09.1998.	-

Cases of Split S.16

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway splitaway group	Decision	Remarks, if any.
1.	1997	28.7.1997	Janata Dal	-	Split in Janata Dal	Janata Dal (Loktantirk)	Allowed	-
2.	2000	24.11.2000	Janata Dal (U)	Shri Ravsevak Hazari and five others.	Split in Janata Dal (U)	Jana Shakti Party	Allowed.	-
3.	2002	-	Janata Dal	*Sarvashri* Shashi (U) Vishwanath Singh, Laxmi Narain Prasad Yadav and Jainandar Prasad Yadav	Split in Janata Kumar Rai,	Janata Dal Dal (U)	Allowed (Jai Prakash) 29.7.2002	- on

Cases of Merger S.17

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1	2002	Bahujan Samaj Party	-	Shri Suresh Pasi	Rashtriya Janata Dal	Allowed on 1.11.2002	-
2	2003	Bahujan Samaj Party (Spliaway Group)	-	*Sarvashri* Mahabli Singh, Rajesh Singh, Chhedi Lal Ram and Zakir Hussain Khan	Rashtriya Janata Dal	Allowed on 25.6.2003	-
3	2003	Samata Party	-	Shri Upendra Prasad Singh and 26 Others	Janata Dal (U)	Allowed	-
4	2004	Janata Dal (Jai Prakash)	-	*Sarvashri* Shashi Kumar Rai and Vishwanath Singh	Janata Dal (U)	Allowed	-
5	2004	Janata Dal (Jai Prakash)	-	Shri Laxmi Narayan Prasad Yadav	Rashtriya Janata Dal	Allowed	-
6.	2004	Samata Party	-	*Sarvashri* Uma Shankar, Bhai Virendra and Ganesh Paswan	Rashtriya Janata Dal	Allowed	-
7.	2005	Revolutionary Communist Party	-	Two MLAs	Rashtriya Janata Dal	Allowed	-

Chhattisgarh Legislative Assembly

Cases of Split S.18

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway splitaway group	Decision	Remarks, if any
1.	2000	6.11.2000	Bhahujan Samaj Party	Dr. Chhavilal Ratre	Split in Bhahujan Samaj Party	Bhahujan Samaj Party Chhattisgarh	Allowed.	-
2.	2001	20.12.2001	Bharatiya Janata Party	*Sarvashri* Tarun Chatterjee, Haridas Bhardwaj, Ganguram Baghel, Shakrajeet Nayak, Vikram Bhagat, Madan Singh Deharia, Paresh Bagbahara, Premsingh Sidar, Lokendra Yadav, Sohanlal, Smt. Shyama Dhruva and Smt. Rani Ratanamala Devi	Split in Bharatiya Janata Party	Chhattisgarh Vikas Party	Allowed.	

Cases of Merger S.19

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	2000	BSP Chhattisgarh	21.11.2000	Dr. Chhavilal Ratre	Indian National Congress	Allowed	-
2.	2001	Chhatisgarh Vikas Party	20.12.2001	Shri Tarun Chatterjee and 11 others	Indian National Congress	Allowed on 20.12.2001	-

Cases where members were treated unattached S.20

Sl No	Year	Date when communic-tion was received	Party from which claim made	Claim made by	Name(s) of the respondent	Name of claim/ request made	Decision	Remarks, if any.
1	2002	6.2.2002	Bharatiya Janata Party	Shri Nand Kumar Sai	Shri Charan Singh Manjhi	Request to treat the respondent unattached member as he was expelled from the party	Declared unattached and seated separately	-

Goa Legislative Assembly

Cases of Disqualification S.21

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1990	28.3.1990	Shri Luizinho Falerio	Dr. Luis Proto Barbosa	Voluntarily giving up membership of original party, i.e. Indian National Congress	Allowed on 14.12.1990 Respondent disqualified.	Petition filed by Dr. Barbosa was rejected by the High Court An appeal was filed and stay on the impugned order was obtained from Supreme Court. Later, Supreme Court vacated the stay on 18.12.1999.
2.	1990	_	Shri Domrick Fernandes and 11 other members	*Sarvashri* Churchil AlemaoJose Baptist Gonsalves, Somnath Zuwarkar, Luis Alex Cardozo, Mouvin Godinho and Ms Farrel Freda Furtado	Voluntarily giving up membership of original Party, i.e. Congress (I)	Dismissed on 13.12.1990	-
3.	1990	_	Shri Mohan Amshekar	*Sarvashri* Luis Proto Barbosa, Churchil Alemao Jose Baptist Gonsalves, Somnath Zuwarkar, Luis Alex Cardozo, Mouvin Godinho and Ms Farrel Freda Furtado	Voluntarily giving up membership of original Party, i.e. Congress (I)	Dismissed on 6.2.1991	-
4.	1990	30.11.1990	Shri Vinayak Naik	Shri Carmo Rafael Pegado	Joining a political party despite being elected as an Independent member	Dismissed on 7.2.1991	-

5.	1990	10.12.1990	Shri Ramakant D. Khalap	*Sarvashri* Ratnakar Chopdekar and Sanjay Bandekar	Violation of whip issued by original Party, i.e. Maharashtrawadi Gomantak Party	Allowed on 13.12.1990 Respondent disqualified.	Respondents obtained a stay from the High Court on the operation of the order. Thereafter, Shri Surendra Sirsat, was removed from the office of Speaker. Respondents filed Review Petitions before the Deputy Speaker, who set aside the Speaker's order. High Court allowed a petition and disqualified the respodents
6.	1991	-	Dr. Kashinath Jhalmi	*Sarvashri* Shanker Salgaonkar, Vinay Kumar Usgaonkar, Pandurang D. Raut and Ashok T. Naik Salgaonkar	Voluntarily giving up membership of original Party, *i.e.* Maharashtrawadi Gomantak Party	Dismissed on 20.6.1991	-
7.	1991	25.1.1991	Dr. Kashinath Jhalmi	Shri Ravi S. Naik	Voluntarily giving up membership of original Party, *i.e.* Maharashtrawadi Gomantak Party	Allowed on 15.2.1991 Respondent disqualified.	High Court stayed the Speaker's order. Review petition filed before the Deputy (Acting) Speaker. Speaker's order revoked. High Court, allowing another petition disqualified respondent. Supreme Court granted a stay, allowing Shri Naik to continue as a member
8.	1992	4.1.1992	Shri Victor Gonsalves	*Sarvashri* Luis Alex Cardozo, Somnath Zuwarkar, J.B. Gonsalves, Mauvin Godinho Churchil Alemao and Smt. Ferrel Furtado.	Voluntarily giving up membership of original Party, *i.e.* Indian National Congress	Dismissed on 15.9.1994.	-

9.	1992	9.1.1992	Shri Pandurang Raut	Shri Dharma Chodankar	Voluntarily giving up membership of original Party, *i.e.* Maharashtrawadi Gomantak Party	Dismissed on 22.10.1994	-
10.	1998	27.7.1998	Shri Pratap Singh R Rane and Dr. Wilfred Menezes Mesquita	*Sarvashri* Wilfred A. D' Souza, Dayanand G. Narvekar, Subhash Ankush Shirodkar, Pandurang Bhatale and Pandu Vasu Naik, Chandrakant Chodankar, Carmo Pagado, Jagdish Acharya, Deo Mandrekar and Smt. Fatima D'Sa.	Voluntarily giving up membership of original Party, *i.e.* Indian National Congress	Allowed on 14.8.1998 Respondent disqualified.	Writ Petition filed in High Court. Speaker's order set aside. Special Leave Petition in Supreme Court. Meanwhile, the Assembly was dissolved and the petition was rendered infructuous

Gujarat Legislative Assembly

Cases of Disqualification S.22

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any
1.	1990	13.11.1990	Shri Dinsha Patel	Shri Jaspal Singh	Violation of party whip (Janata Dal Legislature Party) during the voting on a Motion of Confidence on 1.11.1990.	Allowed. Respondent disqualified	Supreme Court stayed the order of the Speaker. Stay was subsequently vacated and the respondent stood disqualified.

Cases of Split S.23

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any
1.	1996	18.8.1996	Bharatiya Janata Party	Shri Sankarsinh Vaghela and 46 others	Split in Bharatiya Janata Party	Mahagujarat Janata Party	Petition became infructuous on the dissolution of Assembly.	-

Cases of Merger S.24

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1992	Janata Dal (Gujarat) Legislature Party	_	-	Indian National Congress	Allowed on 7.6.1992	-
2.	1992	Yuva Vikas Legislature Party	_	Lone member	Indian National Congress	Allowed on 19.9.1992	-
3.	1997	Mahagujarat Janata Party	_	46 members	Rashtriya Janata Party (Gujarat)	Allowed on 28.7.1997	-
4.	1999	All India Rashtriya Janata Party	_	-	Indian National Congress Legislature Party	Allowed on 20.7.1999	-
5.	1999	Samajwadi Party (Gujarat)	_	Lone member	Bharatiya Janata Party	Allowed on 13.8.1999	-

Haryana Legislative Assembly

Cases of Disqualification S.25

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1989	27.12.1989	Shri Udai Bhan	Shri Tayyab Hussain	Voluntary giving up membership of Lok Dal (B) Party and joining Congress (I) Political Party.	Dismissed on 5.3.1991	-
2.	1990	16.1.1990	Shri P.S. Chouhan	Dr. Kirpa Ram Punia	Voluntarily gave up membership of Janata Dal Party.	Dismissed on 2.2.1990.	-
3.	1990	17.12.1990	Shri Banarasi Das Gupta	*Sarvashri* Vasu Dev Sharma, Rao Ram Narain and Azmat Khan	Voluntarily giving up membership of Janata Dal Legislature Party	Allowed on 26.3.1991	Respondents challenged the order of the Speaker in the High Court, which dismissed the petition.
4.	1991	31.7.1991	Shri Ram Bilas Sharma	Shri Kharaiti La Sharma	Voluntarily giving up membership of BJP	Dismissed on 10.4.1992.	High Court quashed the order of the Speaker and declared the respondent disqualified
5.	1993	29.4.1993 & 23.6.1993	*Sarvashri* Karan Singh Dalal and Chhattar Singh Chauhan	Dr. Om Prakash Sharma	Voluntarily giving up membership of Haryana Vikas Party	Dismissed on 1.12.93	-
6.	1998	25.1.1997	Shri Vireder Pal	*Sarvashri* Charan Das Shorewala and Vinod Kumar Mairya	Voluntarily giving up membership of Samata Party.	Dismissed on 26.6.1998.	High Court quashed the order of the Speaker and held the respondents disqualified. Later, in response to an SLP filed by Shri Shorewala, the Supreme Court stayed the orders of the High Court.

7.	1999	1.12.1999	Shri Narpender Singh	Shri Subhash Chander	Voluntarily giving up the membership of his political party and abstaining from voting in the House contrary to the direction of the Chief Whip.	Dismissed on 1.3.2000.	-
8.	1999	1.12.1999	Shri Narpender Singh	Shri Ram Sarup Rama	Voluntarily giving up the membership of his political party and abstaining from voting in the House contrary to the direction of the Chief Whip.	Dismissed on 1.3.2000.	-
9.	1999	1.12.1999	Shri Narpender Singh	Shri Jagdish Nayyer	Voluntarily giving up the membership of his political party and abstaining from voting in the House contrary to the direction of the Chief Whip.	Dismissed on 1.3.2000.	-
10.	1999	1.12.1999	Shri Narpender Singh	Jagdish Yadav	Voluntarily giving up the membership of his political party and abstaining from voting in the House contrary to the direction of the Chief Whip.	Dismissed on 1.3.2000.	-
11.	2003	31.12.2003	Shri Jasbir Malour	Shri Karan Singh Dalal	Voluntarily giving up membership of his original political party.	Allowed on 25.6.2004	Hon'ble Supreme Court stayed the operation of the order passed by the Speaker in the case except right to vote *vide* order dated 28.6.2004.
12.	2003	31.12.2003	Shri Jasbir Malour	Shri Jagjit Singh Sangwan	Voluntarily giving up membership of his original political party and joining Democratic Congress Party..	Allowed on 25.6.2004	Hon'ble Supreme Court stayed the operation of the order passed by the Speaker in the case except right to vote *vide* order dated

							28.6.2004.
13.	2004	15.6.2004	Shri Nafe Singh Rathi	Shri Rajender Singh Bisla	Joining the political party *i.e.* Indian National Congress despite being Independent.	Allowed on 25.6.2004	Hon'ble Supreme Court stayed the operation of the order passed by the Speaker in the case except right to vote *vide* order dated 28.6.2004.
14.	2004	15.6.2004	Shri Nafe Singh Rathi	Shri Jai Parkash	Joining the political party *i.e.* Indian national Congress despite being Independent.	Disqualified on 25.6.2004	Hon'ble Supreme Court had stayed the operation of the order passed by the Speaker in the case except right to vote *vide* order dated 28.6.2004.
15.	2004	15.6.2004	Shri Nafe Singh Rathi	Shri Bhim Sain	Joining the political party *i.e.* Indian National Congress despite being Independent.	Allowed on 25.6.2004	Hon'ble Supreme Court stayed the operation of the order passed by the Speaker in the case except right to vote *vide* order dated 28.6.2004.
16.	2004	15.6.2004	Shri Nafe Singh Rathi	Shri Dev Raj Diwan	Joining the political party *i.e.* Indian National Congress despite being Independent.	Allowed on 25.6.2004	Hon'ble Supreme Court stayed the operation of the order passed by the Speaker in the case except right to vote *vide* order dated 28.6.2004.
17.	2004	15.6.2004	Shri Nafe Singh Rathi	Shri Moola Ram	Joining the political party *i.e.* Indian National Congress despite being Independent.	Allowed on 5.11.2004	-
18.	2004	15.6.2004	Shri Nafe Singh Rathi	Shri Dariyao Singh	Joining the political party *i.e.* Indian National Congress despite being Independent.	Allowed on 5.11.2004	-

Cases of Split S.26

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1990	6.11.1990	Janata Dal Legislature Party	41 members	Split in Janata Dal	Janata Dal (Socialist)	Allowed on 6.11.1990	-
2.	1991	17.7.1991	Bharatiya Janata Party (2 MLAs)	Shri Kharaiti Lal Sharma	Split in Bharatiya Janata Party	Bharatiya Janata Party (K)	Allowed on 17.7.1991	-
3.	1991	19.8.1991	Janata Dal Legislature Party	Shri Hari Singh Nalwa	Split in Janata Dal	Janata Dal (H)	Allowed on 27.8.1991	-
4.	1993	6.7.1993	Janata Dal Legislature Party	Shri Virendra Singh	Split in Janata Dal	Janata Dal (V)	Allowed on 16.7.1993	-
5.	19993	2.9.1993	Haryana Vikas Party	Shri Amar Singh and 3 other MLAs	Split in Haryana Vikas Party	Haryana Vikas Party (A)	Allowed on 29.10.1993.	-
6.	1999	21.7.1999	Haryana Vikas Party	Shri Kartar Singh Bhadana and 16 other MLAs	Split in Haryana Vikas Party (Democratic)	Haryana Vikas Party (Demnocra-tic)	Allowed on 13.8.1999	-

Cases of Merger S.27

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1989	Lok Dal	8.2.1989	Ch. Devi Lal	Janata Dal	Allowed on 17.2.1989	-
2.	1991	Bharatiya Janata Party (K)	24.7.1991	Shri Kharaiti La Sharma	Indian National Congress	Allowed on 29.7.1991	-
3.	1991	Janata Dal	20.12.1991	Shri Hari Singh	Janata Dal (H)	Allowed on 27.12.199	-
4.	1993	Janata Dal-V	11.7.1993	Shri Virender Singh	Indian National Congress Party	Allowed on 21.7.1993.	-
5.	1994	Janata Dal	25.2.1994	Smt. Chandravati	Indian National Congress Party	Allowed on 26.2.1994	-
6.	1996	Samata Party	18.6.1996	Shri Om Prakash Chautala and others	Samajwadi Janata Party	Allowed	-
7.	1996	Samata Party	9.12.1997	Shri Om Prakash Chautala and others	Haryana Lok Dal (Rashtriya Legislature Party)	Allowed on 19.1.1998	-
8.	1997	All India Indira Congress Party(Tiwari)	14.1.1997	Shri Virender Singh and 2 other members	Indian National Congress Party	Allowed on 6.2.1997	-
9.	1999	Haryana Vikas Party (Democratic)	16.8.1999	Rao Narbir Singh	Haryana Lok Dal Rashtriya	Allowed on 16.8.1999.	-

Cases where members were treated Unattached S.28

Sl.No.	Year	Date when communication was received	Party from which claim was made	Claim made by	Name(s) of respondent(s)	Nature of claim/request made	Decision	Remarks, if any.
1.	1992	_	Haryana Vikas Party	_	Dr. Om Prakash Sharma	Request to treat the respondent unattached member as he was expelled from the party.	Dr. Sharma declared unattached on 3.12.1992.	_

Himachal Pradesh Legislative Assembly

Cases of Disqualification S.29

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1998	1998	Shri Kashmir Singh	*Sarvashri* Mansa Ram and Prakash Chaudhary	Voluntarily giving up membership of original part, i.e Himachal Vikas Congress	Dismissed on 26.7.1999	Writ Petition filed in the High Court

Cases of Split S.30

Sl.No	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway splitaway group	Decision	Remarks, if any.
1.	1990	14.11.1990	Janata Dal	*Sarvashri* Ram Lal, Moti Ram, Jagat Singh Negi, Roop Singh, Lajja Ram, Shiv Kumar, Kr. Durga Chand and Km. Shyama Sharma	Split in Janata Da	Janata Dal (S)	Allowed	-
2.	1991	24.7.1991	Janata Dal (S)	*Sarvashri* Ram Lal, Moti Ram and Lajja Ram	Split in Janata Da (S)	Himachal Congress	Allowed	-
3.	1992	30.6.1992	Janata Dal (S)	*Sarvashri* Jagat Singh Negi and Roop Singh	Split in Janata Da (S)	Himachal Vikas Manch	Allowed	-
4.	1998	10.3.1998	Himachal Vikas Congress	*Sarvashri* Mansa Ram and Prakash Chaudhary	Split in Himachal Vikas Congress	Himachal Kranti Party	Allowed	-

Cases of Merger S.31

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1	1992	Himachal Vikas Manch	7.7.1992	*Sarvashri* Jagat Singh Negi and Roop Singh	Bharatiya Janata Party	Allowed.	-
2.	1992	Janata Dal	23.9.1992	*Sarvashri* Vijay Singh Mankotia and Kewal Singh Pathania	Congress (I)	Allowed.	-
3	1991	Himachal Congress Party	28.9.1992	*Sarvashri* Ram Lal, Moti Ram and Lajja Ram	Congress (I)	Allowed.	-
4	1992	Janata Dal (S)	12.10.1992	*Sarvashri* Kr. Durga Chand and Shri Shiv Kumar	Congress (I)	Allowed.	-
5.	1998	Himachal Kranti Party	11.3.1998	*Sarvashri* Mansa Ram and Prakash Chaudhary	Bharatiya Janata Party	Allowed.	-

Karnataka Legislative Assembly

Cases of Disqualification S.32

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1989	16.2.1989	Smt. Nagarathan-amma	111 members	Voluntarily giving up membership of the original party, i.e. Janata Party	Dismissed on 16.2.1989.	-
2.	2002	13.12 2002	Shri Jagadeesh Shetter	Dr. N.L. Bharathi Shanker, Ms. A.Manju, *Sarvashri* V. Krishnappa, K H. Hanumegowda, Gundappa Vakil, V Pappanna and H.C. Basavaraju	Voluntarily giving up membership of BJP	Dismissed on 30.1.2004	-

Cases of Merger S.33

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1989	Janata Legislature Party	31.1.1989	Shri S.R. Bommai	Lok Dal	Allowed. on 16.2.1989	-

Karnataka Legislative Council

Cases of Split S.34

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any
1.	1996	26 and 27.8.1996	Janata Dal Legislature Party	Shri Tippanna and 6 others	Split in Janata Da Legislature Party	Separate Legislature group of Janata Dal	Allowed	-
2.	1996	22.10.1999	Janata Dal	18 Members	Split in Janata Dal	Janata Dal (S) and remaining five members of Janata Dal renamed their Party as Janata Dal (U)	Allowed	-
3.	2000	11.7.2000	Separate Group of Janata Dal	1 member	Split in Separate Group of Janata Dal	Independent	Allowed	Separate Group of Janata Dal had three members. The member claiming split requested that he may be treated as Indpendnent

Cases of Merger S.35

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any
1.	1989	Janata Legislature Party	1989	33 members	Lok Dal	Allowed.	-
2.	2000	Lok Shakti Party	28.3.2000	2 members	Janata Dal (U)	Allowed.	-

Kerala Legislative Assembly

Cases of Disqualification S.36

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.1.	1989	29.11.1989	Dr. K.C. Joseph	Shri R. Balakrishna Pillai	Voluntarily giving up membership of original party (Kerala Congress) and forming a new party (Kerala Congress (B)	Allowed on 15.1.1990. Respondent disqualified.	-
2.	2003	_	Shri A.C Shammugha-das	Shri V.C. Kabeer	Voluntarily giving up membership of original party i.e. Nationalist Congress Party	Dismissed on 11.6.2003.	-

Cases of Split S.37

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1993	10.12.1993	Kerala Congress (M)	*Sarvashri* J.M. Jacob, Jony Nelloor, P.M. Mathew, Mathew Stephen	Split in Kerala Congress (M) Party	Kerala Congress (Jacob)	Allowed on 20.1.1994	-
2.	1999	25.3.1999	Revolution-ary Socialist Party	*Sarvashri* Baby John, Babu Divakaran and A.V.Thamar-akshan	Split in Revolutio-nary Socialist Party	Revolution-ary Socialist Party (Baby John)	Allowed on 13.12.1999	Subsequ-ently, the RSP (Baby John) was recogniz-ed in the House as RSP (Bolshevik) w.e.f. 20.6.2000.
3.	2003	11.6.2002	Nationalist Congress	Shri V.C.Kabeer	Split in Nationalist Congress	Congress (Socialist)	Allowed on 11.6.2003.	-

Madhya Pradesh Legislative Assembly

Cases of Disqualification S.38

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1999	19.12.1990	Shri Ram Pratap Singh	Shri Dilip Bhatere.	Independent member associated himself with programmes and policies of BJP, which amounted to voluntary giving up membership.	Alowed on 10.8.1991 Respondent disqualified.	Respondent challenged Speaker's order in the Supreme Court. Petition dismissed
2.	1991	6.4.1991 and 11.4.1991	Smt. Neha Singh and Shri Shailendra Pradhan	*Sarvashri* Mangal Parag, Santosh Aggarwal, Laxman Jaidev Satpathi, Ashok Rao, Arun Mishra and Shiv Kumar Singh	Voluntarily giving up membership of Janata Dal (S)	Alowed on 1.5.1991 Respondents disqualified.	Writ petition in the High Court challenging the order of the Speaker. Interim stay granted. Later, High Court quashed Speaker's order
3.	1998	-	Shri Ram Kumar Patel	Shri Akhand	Voluntarily giving up membership of original party, i.e. Congress (I)	Allowed on 14.5.1998 Respondent disqualified.	Writ petition filed in the High Court. High Court stayed the order

Maharashtra Legislative Assembly

Cases of Disqualification S.39

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	2002	4. 6.2002	Shri Sachin Ahir	Shri Shrish Kumar Vasantrao Kotwal	Voluntarily giving up membership of Nationalist Congress Party	Allowed. Respondent disqualified.	Respondent challenged the order of the Speaker in the High Court. Dismissed. Later, Supreme Court granted interim relief, providing that the appellants would be allowed to attend proceedings, but he would not be entitled to speak or vote. Later, the appeal in the Supreme Court was dismissed as withdrawn.
2.	2002	4.6.2002	Shri Sachin Ahir	*Sarvashri* Narayan Pawar, Narsing Patil and Shivajirao Naik	Voluntarily giving up membership of Nationalist Congress Party	Allowed. Respondents disqualified.	Respondent challenged the proceedings in the High Court. Dismissed. Later, Supreme Court granted interim relief providing that the appellants would be allowed to attend proceedings, but they would not be entitled to speak or vote. Later, the appeal in the Supreme court was dismissed as withdrawn.
3.	2002	6.6.2002	Shri Dada Jadhavrao	Shri Gangaram Poshetti Thakkarwad	Voluntarily giving up membership of Janata Dal (Secular)	Allowed. Respondent disqualified.	Respondent challenged Speaker's orders in the High Court. Dismissed. Later, Supreme Court granted interim relief providing that

							the appellants would be allowed to attend proceedings, but he would not be entitled to speak or vote. Later, the appeal in the Supreme court was dismissed as withdrawn.
4.	2002	6.6.2002	Shri Narendra Marutraoji Ghule	Shri Vinay Vilasrao Kore	Voluntarily giving up membership of Nationalist Congress Party	Allowed. Respondent disqualified	Respondent challenged Speaker's orders in the High Court.
5.	2002	7.6.2002	Shri Rohidas Patil	Shri Desmond Yates	Nominated members changed Party affiliation after having joined the INC Legislature Party	Allowed Respondent disqualified.	Respondent challenged Speaker's orders in the High Court and obtained stay. Later, the Court vacated the stay and the Respondent stood disqualified.

Cases of Split S.40

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1989	9.3.1989 and 15.3.1989	Janata Party	Shri Domnic Gonsalvis and 20 others	Split in Janata Party	Janata Dal	Allowed on 24.4.1989	-
2.	1991	26.7.1991	Janata Dal	Shri Jawahar Trimbakrao Parvekar and 8 others	Split in Janata Dal	Maharashtra Congress Dal	Allowed on 1.8.1991	-
3	1991	5.12.1991	Shiv Sena	Shri Chhagan Chandrakant Bhujbal and 17 others	Split in Shiv Sena	Shiv Sena (B)	Allowed on 10.12.1991	-
4.	1992	27.3.1992	Shiv Sena (B)	*Sarvashri* Hanumant	Split in Shiv Sena (B)	Shiv Sena (C)	Allowed on 27.3.1992	-

				Bobde, Maroti Parshuram Shinde and Diliprao Malharrao Desari				
5.	1993	30.12.1993	Janata Dal	Shri Moreshwar Temburde and 4 others	Split in Janata Dal	Samajwadi (B)	Allowed on 30.12.1993	-
6.	1999	23.10.1999	Samajwadi Party	Shri Bashir Moosa	Split in Samajwadi Party	Samajwadi (B)	Allowed on 3.11.1999	-
7.	2002	9.10.2002	Bharip Bahujan Mahasangh	*Sarvashri* Dashrath Motiram Bhande Ramdas Maniram Bodke and Vasantrao Dodha Suryavanshi	Split in Bharip Bahujan Mahasangh	Bharip Bahujan Mahasangh (B)	Allowed on 5.12.2002	-

Cases of Merger S.41

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1991	Socialists (Sharad Chandra Jain)	12.5.1991	Shri Suresh Jain	Indian National Congress	Allowed on 24.6.1991	-
2.	1991	Maharashtra Congress Dal	1.8.1991	Shri Jawahar Trimbakrao Parvekar and 8 others	Indian National Congress	Allowed on 1.8.1991	-
3.	1991	Shiv Sena (B)	18.12.1991	Shri Chhagan Chandrakant Bhujbal and 11 others	Indian National Congress	Allowed on 18.12.1991	-

4.	1992	Shiv Sena (B)	27.3.1992	*Sarvashri* Gulabrao Garande, Baban Gholap and Prakash Bharsakhale	Shiv Sena	Allowed on 27.3.1992	-
5	1992	Shiv Sena (C)	27.3.1992	*Sarvashri* Hanumant Bobde, Maroti Parshuram Shinde and Diliprao Malharrao Desari	Indian National Congress	Allowed on 27.3.1992	-
6.	1994	Republican Party of India	6.8.1994	Shri Bhimrao Ramji Keram	Indian National Congress	Allowed on 6.8.1994	-
7.	2001	Samajwadi (B)	26.1.2001	Shri Bashir Moosa Patel	Nationalist Congress Party	Allowed on 28.2.2001	-
8.	2001	Samajwadi Party	8.10.2001	Shri Nawab Malik	Nationalist Congress Party	Allowed on 8.10.2001	-

Manipur Legislative Assembly

Cases of Disqualification S.42

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1992	6.1.1992	N. Ibomcha Singh and W. Nipamacha Singh	Shri Holkhomang Haokip	Voluntarily giving up membership of Congress (S)	Allowed on 17.2.1992 Respondent disqualified.	-
2.	1992	6.1.1992	Shri Kh. Amutombi Singh	*Sarvashri* SelkaiHrangchal and Th. Krishna Singh	Voluntarily giving up membership of Janata Dal.	Allowed on 30.1.1992 Respondents disqualified.	-
3.	1995	3.7.1995	3 members of Congress (I)	Shri Basanta Kumar Wangkhem	Voluntarily giving up membership of Congress (I).	Allowed on 29.7.1995 Respondent disqualified.	-
4.	1995	3.7.1995	2 members of Congress (I)	Shri Hangkhanpao	Voluntarily giving up membership of Congress (I).	Allowed on 29.7.1995 Respondent disqualified	Speaker's decision challenged in the High Court. Court dismissed the petition.
5.	1995	3.7.1995	2 members of Congress (I)	Shri O. Lohri	Voluntarily giving up membership of Congress (I)	Allowed on 29.7.1995 Respondent disqualified	-
6.	1995	3.7.1995	2 members of Congress (I)	Shri Sehpu Haokip	Voluntarily giving up membership of Congress (I).	Allowed on 29.7.1995 Respondent disqualified	Speaker's decision challenged in the High Court. Court dismissed the petition.
7.	1995	3.7.1995	2 members of Congress (I)	Shri T. Gouzadou	Voluntarily giving up membership of Congress (I).	Allowed on 29.7.1995 Respondent disqualified	Speaker's decision challenged in the High Court. Court dismissed the petition.
8.	2000	19.6.2000	Shri D. Shaiza	Shri Chungkhokai Doungel	Voluntarily giving up membership of Congress (I).	Dismissed on 2.12.2000.	Petition filed in Supreme Court.

9.	2000	19.6.2000	Shri Kh. Amutombi	Shri Thangminlien Kipgen	Voluntarily giving up membership of Congress (I).	Allowed on 17.11.2000 Respondent disqualified.	Petition filed in High Court. Court stayed the decision of the Speaker. Writ Appeal filed by Shri Amutombi Singh in High Court, which dismissed it.

Cases of Merger S.43

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.1.	2003	Democratic Revolutio-nary Peoples' Party	15.9.2003	Dr. T. Meinya and Shri Nongthombam Biren	Indian National Congress (I)	Allowed	-

Meghalaya Legislative Assembly

Cases of Disqualification S.44

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1988	25.2.1988	Shri S.D. Khongwar	*Sarvashri* B.R. Lyngdoh, Anthony Lyngdoh, P.G. Momin, Dhabal Ch. Barman	For voting contrary to the Party directive on 24 and 29 February 1988.	Dismissed on 21.11.1988.	-
2.	1988	1.3.1988	Shri S.D. Khongwar	*Sarvashri* B.R. Lyngdoh, Anthony Lyndoh, P.G. Momin, Dhabal Ch. Barman	Violated the whip and voted against the Motion of No-Confidence.	Dismissed on 21.11.1988	-
3.	1988	9.3.1988	Shri S.P. Swer	Shri Lehinson Sangma, Shri Projend D. Sangma	Violated the whip dated 26.2.1988 of the HPU (B) and voted in favour of No-Confidence Motion.	Dismissed on 21.11.1988.	-
4.	1988	3.5.1988	Shri S.D. Khongwir	Shri P.D. Sangma	Violating party directive while voting on a Private Members, Resolution on the 21.4.1988.	Dismissed on 21.11.1988.	-
5.	1989	9.3.1988	Shri S.P. Swer	Shri Lehinson Sangma	Violation of Party Whip during a No -Confidence Motion on 29.2.1988	Allowed on 22.8.1989	Writ petition filed in the High Court by the respondent
6.	1991	5.8.1991	Shri Shylla	Smt. Miriam D. Shira, *Sarvashri* Donkupar Roy, Simon Siangshai Monindra Agitok and Chamberlin Marak	Joining a political party viz. H.S.P.I.P. (DL) and H.P.U. (BC) despite being independent member.	Allowed on 17.8.1991	Supreme Court stayed the order of the Speaker. Supreme Court finally set aside the orders of Speaker

7.	1998	25.6.1998	Shri H.S. Shylla	Shri Maysalin War	Joining the UMPF coalition led by Shri D.D. Lapang.	Allowed on 7.7.1998	Interim order placing Smt. M. War under suspension and also her voting right. Suspension and voting right withdrawn on 17.12.1998 by Hon'ble Speaker.

Cases of Split S.45

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	2000	7.2.2000	H.S.P.D.P. (M)	Smt. Maysalin War	Merger of H.S.P.D.P. (M) into the N.C.P.	H.S.P.D.P. (M)	Allowed on 7.3.2000	-
2.	2001	2.4.2001	P.D.M.	Shri C.R. Marak and Shri M.M. Danggo	Split in the original political party of P.D.M.	P.D.M. (C.M.)	Allowed on 5.7.2001	-
3.	2001	27.11.2001	U.D.P.	Shri B.B. Lyngdoh & 8 others.	Split in original party U.D.P.	M.U.D.P.	Allowed on 29.11.2001	-
4.	2001	27.11.2001	United Democratic Party	*Sarvashri* B.B. Lyngdoh, A.H. Scott Lyngdoh, M.N. Mukhim, S.S. Lyngdoh, S. Siangshai, P.T. Sawkmie, R. Rani and D.P. Liangjuh	Split in United Democratic Party	Meghalaya United Democratic Party	Allowed on 29.11.2001	-
5.	2003	15.12.2003	Nationalist Congress Party	*Sarvashri* Cyprian R. Sangma, Elstone D. Marak, Brening A. Sangma, Samuel M. Sangma, Beckstar Sangma and Nidhuram Hajong	Split in Nationalist Congress Party	Meghalaya Nationalist Congress Party	Allowed on 17.12.2003	-

Mizoram Legislative Assembly

Cases of Disqualification S.46

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any
1.1.	1994	9.5.1994 and 16.5.1994	Shri Zoramthanga	*Sarvashri* H. Lalruata, L.P. Thangzika, Zankhu Hlyohho, F. Lalzuaula and T. Haranghluta	Voluntarily giving up membership of original party, i.e. Mizo National Front	Dismissed on 22.11.1994	-

Cases of Split S.47

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any
1.	1994	2.5.1994	Mizo National Front	*Sarvashri* H. Lalruata, L.P. Thangzika, Zankhu Hlyohho, F. Lalzuaula and T. Haranghluta	Split in Mizo National Front	Mizo National Front (I)	Allowed on 20.11.1994	-

Nagaland Legislative Assembly

Cases of Disqualification S.48

Sl.No.	Year	Date when Petition given	Name(s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1987	23.7.1987	Shri Vamuzo	Dr Setu Liegise	Voluntarily giving up membership of original party i.e. NNDP	Allowed on 1.8.1997. Respondent disqualified.	-
2.	1990	12.12.1990	Shri Kihoto Hollohon	*Sarvashri* Konngam, Khusatho, T Miachieo, L Mekiye Sema and Zachilhu	Voluntarily giving up membership of original party i.e. Congress (I)	Allowed on 15.12.1990 Respondent disqualified.	-
3.	1990	-	-	*Sarvashri* T.M. Lotha, S. Neakba Kohyat, Joshua, S. Sethricho, Pakhayi, T.R. Zeliang, a. Lukhiumong, S. Sangtem, S. Yokten and Bangjhap Pham	Voluntarily giving up membership of original party i.e. Nagaland People's Council	Allowed on 15.12.1990 Respondent disqualified.	-

Cases of Split S.49

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1988	30.7.1988	Congress (I)	*Sarvashri* Kihota Hollohon, Pohwang, N. Yeangphong, K.L.Chishi, N. Eyong, Bangjak Phom, I. Nungshi, S. Yokten, (Dr.) H. Vizadal	Split in Congress (I)	Congress (Regional)	Allowed on 30.7.1988	-

				Sakhoje, A. Lakhimong, A. Nyamnyel Konyak, Joshua and imtimeren Jamir.				
2.	1990	15.5.1990	Congress (I)	*Sarvashri* T.A. Ngullie, Chubatemjen, C. Chongshen, Tiamerch, Nokzenketba, S. Sedam, Sethricho, S.K. Sangtam, Tsuknungpenzu, Neiphiu Rio, Pukhayi and K. Kiko	Split in Congress (I) party	Congress (Regional)	Allowed on 15.5.1990	-
3.	1990	14.12.1990	Nagaland Peoples' Council	Dr. T.M. Lotha, *Sarvashri* Neakba Konyak, Joshua, S. Sethricho, Pukhayi, Zeliang Lakiumong, S.K. Sangtam, S. Yokten, Bangjak Phom, Seden Khaming and Dr. H.V. Sakrie	Split in Nagaland Peoples' Council	Nagaland Peoples' Council (Original)	Declared not allowed on 15.12.1990	10 petitioners disqualified.
4.	1993	25.10.1993	Democratic Labour Party	Shri Y. Sulanthung Lotha	Split in Democratic Labour Party	Democratic Labour Party (S)	Allowed on 11.1.1994	-
5.	1994	-	Nagaland Peoples' Council	*Sarvashri* P. Enyei, W Eyong T.P. Manlem, Sedem Khaming, Chenlom and K. Imlong	Split in Nagaland Peoples' Council	Nagaland Peoples' Council Democratic Party	Allowed on 16.3.1994	-

Cases of Merger S.50

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1990	Congress(R)	-	Shri Noke	Nagaland Peoples' Council	Allowed on 27.11.1990	-
2.	1994	Nagaland Peoples' Council Democratic Party	8.7.1994	*Sarvashri* K. Enyei, W. Eyong, Sedan Khaming, Chemlon and K. Imlong	Congress	Allowed.	Petition filed in the High Court Transfer petition in Supreme Court. Supreme Court remitted the petition to High Court.

Cases where Members were treated Unattached S.51

Sl.No.	Year	Date when Communication was mad.	Party from which claim was made	Claim made by	Name(s) of respondents	Nature of claim /request made	Decision	Remarks, if any.
1.	1990	13.12.1990	Nagaland Peoples' Council	*Sarvashri* Thenucho and Vamuzo	*Sarvashri* Dr. H.V. Sakhrie and Seden Khaming	Request to treat the respondents unattached members as they were expelled from the party.	Declared unattached on 13.12.1990	-

Orissa Legislative Assembly

Cases of Disqualification S.52

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1989	29.3.1989	Shri Satya Bhushan Sahu	Shri Bhajaman Behera	Voluntarily giving up membership of original party and also for defying whip by his party, *i.e.* Indian National Congress.	Allowed on 15.9.1989 Respondent disqualified.	-
2.	1992	15.2.1992	Shri Jangyeswar Baboo	Shri Rabindra Kumar Mallick	Joining Indian National Congress Party despite being elected as an Independent member.	Dismissed on 20.12.1994	-
3.	1992	19.11.1994	Shri Ashok Das	Shri Kumar Behera	Voluntarily giving up membership of Janata Dal	Allowed on 1.12.1994 Respondent disqualified	-

Punjab Legislative Assembly

Cases of Disqualification S.53

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1987	11.6.1986	Sardar Surjit Singh Barnala (22 separate petitions)	Sardar Kuldip Singh Wadala and 21 others	Violation of whip issued by Shiromani Akali Dal.	Allowed on 1.5.1987 Respondent disqualified. (21 others were also disqualified through identical orders)	All the members so disqualified filed writ petitions in the High Court and thereafter in the Supreme Court. Petitions dismissed
2.	1987	14.2.1987	Sardar Surjit Singh Barnala	Sardar Harbhajan Singh Sandhu	Voluntarily giving up membership of Shiromani Akali Dal	Allowed on 16.2.1987 Respondent disqualified.	-

Cases of Split S.54

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1993	16.5.1993	Bharatiya Janata Party	Shri Ramesh Datt Sharma and Dr. Harbans Lal	Split in Bharatiya Janata Party	Bharatiya Janata Party (Punjab)	Allowed on 5.7.1993	-

Cases of Merger S.55

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made of	Name of Party merged with	Decision	Remarks, if any.
1.	1993	United Communist Party of India	15.7.1993	Shri Baldev Singh Ballamgarh	Congress (I)	Allowed on 16.7.1993	-
2.	1994	Indian Peoples' Front	26.8.1994	Comrade Surjan Singh Joga	Congress (I)	Allowed on 1.9.1994	-
3.	2002	Communist Party of India	9.10.2002	Sardar Gurjant Singh and Shri Nathu Ram	Congress (I)	Allowed on 10.10. 2002	-

Rajasthan Legislative Assembly

Cases of Disqualification S.56

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1994	17.3.1994 and 23.3.1994	Shri Fateh Singh and Shri Shanti Kumar Dhariwal	*Sarvashri* Brijraj Singh, Nasaru Khan and Punjalal	Violation of party whip during voting on Confidence Motion on 31.12.1993.	Dismissed	-
2.	1996	-	Shri Rajendra Gehlot	Shri Sukhlal Saincha	Voluntarily giving up membership of original party i.e. Indian National Congress	Dismissed	-
3.	1998	-	Shri Fateh Singh	Shri Dalichand	Voluntarily giving up membership of Janata Dal	Dismissed	-
4.	1998	-	Shri Jagdeep Dhankhand	*Sarvashri* Ganga Ram Chaudhary Sujan Singh Yadav, Rohitashwa, Gyan Singh, Gujant Singh, Mangal Singh, Smt. Narendra Kanwar and Smt Shashi Datta.	Joining a political party (BJP) despite being elected as Independent members.	Dismissed	-

Cases of Split S.57

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1994	–	Janata Dal	*Sarvashri* Brijraj Singh, Nasaru Khan and Punjalal	Split in Janata Dal	Bharatiya Janata Dal	Allowed.	Later, one more MLA, viz. Shri Dalichand claimed a split in the Janata Dal and subsequently joined the BJP. The claim was allowed.

Sikkim Legislative Assembly

Cases of Disqualification S.58

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any
1	1994	3.6.1994	Shri Nar Bahadur Bhandari	Shri Dilliram Basnet and Shri Birbal Subba	Voluntarily giving up membership of member's original party i.e. Sikkim Sangram Parishad	Dismissed on 22.7.1994	-
2	1994	3.6.1994	Shri Nar Bahadur Bhandari	Shri Chamla Tshering and 14 others	Voluntarily giving up membership of members' original party *i.e.* Sikkim Sangram Parishad	Dismissed on 22.7.1994	-
3.	1995	21.3.1995	Shri K.N. Upreti	*Sarvashri* Ram Lepcha, Melom Lepcha, Tseten Tashi Bhutia, D.J. Lepcha, Thutop Bhutia and Smt. R. Ongmu	Voluntarily giving up membership of members' original party *i.e.* Sikkim Sangram Parishad	Dismissed on 21.9.1996	-

Cases of Split S.59

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1994	15.5.1994	Sikkim Sangram Parishad	*Sarvashri* Chamla Tshering, O.T. Bhutia, Sonam Dupden, Sonam Choda Lepcha, S.G. Keleon, Tasa Tangay, Namkha Gyaltshen, Phuchung Bhutia, Hangu Tshering, Chewang, Lhamu Ugen Tshering Pintso, Rup Raj Rai, M.B. Dahal, B.Ramud-amu and Sanchama Limboo	Split in Sikkim Sangram Parishad	Sikkim Sangram Parishad (S) Party	Allowed on 21.5.1994	Later, Sh. Birbal Subba was also included in the Group by the Speaker's order. (Subsequently, petition filed for disqualification of these members, which was dismissed vide Speaker's decision dated 22.7.1994).
2.	1994	25.7.1995	Sikkim Sangram Parishad	*Sarvashri* Ram Lepcha, Melon Lepcha, Tseten Tashi Bhutia, D.J. Lepcha, Thutop Bhutia and Smt. Ongmu	Split in Sikkim Sangram Parishad	Sikkim Sangram Parishad (R) Party	Allowed.	-

Tamil Nadu Legislative Assembly

Cases of Disqualification S.60

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1995	6.3.1995	Shri Subburethi-nam and Smt. Mariam -Ul-Asia	*Sarvashri* Azhagu Thirunavukk-arasu and G. Viswanathan	Voluntarily giving up membership of original party, *i.e.* AIADMK	Allowed on 20.4.1995 Respondents disqualified.	Writ petition against Speaker's order in High Court of Madras. Dismissed. Writ petition in Supreme Court. Dismissed.
2.	2000	28.6.2000	Shri B. Arunkumar	Shri M. Mathu-ramalingam	Voluntarily giving up membership of original party *i.e.* DMK	Allowed on 8.7.2000 Respondent disqualified.	-

Uttar Pradesh Legislative Assembly

Cases of Disqualification S.61

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any.
1.	1990	30.11. 1990	Shri Pramod Tewari	Shri Dharam Pal	Violation of whip at the time of voting on Confidence Motion by the Mulayam Singh Yadav Govt. on 20.11.1990.	Dismissed.	-
2.	1995	7.2.1995	Shri Vishram Singh Yadav	Shri Updesh Singh Chauhan	Violation of whip, at the time of voting on Supplementary Demands for Grants on 7 February 1995.	Declared in-admissible on 21.9.1995	-
3	1995	10.2.1995	Shri Kalyan Singh	Shri Sawami Parmanand Dandi	Violation of whip during voting on Motion on Amendment to the Governor's Address on 8.2.1995.	Declared not admitted on 1.6.1995	-
4.	1995	10.2.1995	Shri Kalyan Singh	Shri Amar Singh	Violation of whip during voting on Motion on Amendment to the Governor's Address on 8.2.1995.	Declared inadmissible on 7.6.1995	-
5.	1995	10.2.1995	Shri Kalyan Singh	Shri Ratan Lal Pawar	Violation of whip on 8.2.1995.	Declared inadmissible on 1.6.1995	-
6.	1990	8.3.1995	Shri Kalyan Singh	Shri Ganpat Singh	Violation of whip during voting on Motion on Amendment to the Governor's	Declared not admitted on 21.9.1995	-

					Address on 8.2.1995.		
7.	1997	24.10.1997 and 11.11.1997	Km. Mayawati & Sh. R.K. Choudhary	Shri Hari Kishan	Violation of whip during voting on Confidence Motion moved by Kalyan Singh Govt. on 21 October 1997.	Dismissed on 25.2.1998.	-
8.	1997	24.10.1997	Km. Mayawati and Shri R.K. Choudhary	Shri Vansh Narayan Singh and 11 others	Violation of whip during voting on Confidence Motion moved by Kalyan Singh Govt. on 21 October, 1997.	Disallowed on 23 March 1998.	Petitions filed in Supreme Court. Referred to Constitution Bench.
9.	1997	7.11.1997	Shri Pramod Tewari	*Sarvashri* Amarmani Tripathi, Baccha Pathak and Vikramajeet Maurya	Violation of Party whip during voting on a Motion of Confidence on 21.10.1997	Reserved ruling on 20.10.1999	-
10.	1997	17.11.1997	Shri Pramod Tewari	*Saravshri* Virendra Singh, Fateh Bahadur Singh, Ganga Baksh Singh, Jagadambika Pal, Puran Singh Bundela, Vivek Kumar Singh, Sangram Singh, Saraswati Pratap Singh, Satish Sharma, Hari Shanker Tiwari, Mandaleshwar Singh, Bihari Lal	Violation of party whip at the time of voting on Confidence Motion by the Kalyan Singh Govt. on 21 October, 1997.	Petitions against Shri Jagadambika Pal and Shri Puran Singh Bundela were dismissed on 31.3.1998. Speaker Reserved judgment on remaining 17 petitions on 29.10.99.	-

				Arya, Vinay Kumar Pandeya, Rakesh Tyagi, Divakar Vikram Singh, Naresh Aggarwal Dalbir Singh, Lakshmi Narayan Chaudhury and Shyam Sunder Sharma.			
11.	1998	9.2.1998	*Sushri* Mayawati	Shri Rizwan Zahir	Voluntarily giving up membership of original party (Bahujan Samaj Party)	Respondent resigned, petition became infructous.	-
12.	1997	13.4.1998 and 31.8.1998	Shri Swami Prasad Maurya	*Sarvashri* Rajendra Singh Patel, Ved Prakash, Munna Lal Maurya, Shiv Ganesh Lodhi, Jai Narain Tiwari, Qasim Hasan and Ram Rattan Yadav	Violation of Party Whip at the time of voting on the Confidence Motion by the Kalyan Singh Govt. on 21 October, 1997.	Action on petitions deferred till the disposal of appeals in the Mayawati *Vs* Markandeya Chand case, filed by *Sushri* Mayawati in the Supreme Court.	-
13	1998	1.12.1998 and 8.12.1998	*Sarvashri* Naresh Aggarwal and Suresh Pandey	*Sarvashri* Jagdambika Pal and Puran Singh Bundela	Joining of a political party by Unattached members.	Reserved ruling on 12.7.2000	-

Cases of Split S.62

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1990	26.11.1990	Janata Dal	Shri Mulayam Singh Yadav and others	Split in Janata Dal	Janata Dal (Samajwadi)	Allowed on 26.11.1990	-
2.	1992	29.9.1992	Janata Party	Shri Mulayam Singh Yadav and others	Split in Janata Party	Samajwadi Party	Allowed on 29.9.1992	-
3.	1994	4.3.1994	Communist Party of India	Shri Mitrasen Yadav	Split in Communist Party of India	Samajwadi Group	Allowed on 4.3.1994	-
4.	1994	24.3.1994	Janata Dal	Shri Brahma Shankar Tripathi and others	Split in Janata Dal	Samata Group	Allowed on 24.3.1994	-
5.	1994	23.6.1994	Janata Dal	Shri Ashok Kumar Singh Chandel and others	Split in Janata Dal	Samata Group	Allowed on 23.6.1994	-
6.	1994	29.6.1994	Janata Dal	Shri Narendra Singh and others	Split in Janata Dal	Pragatisheel Janata Dal	Allowed on 29.6.1994	-
7.	1994	22.7.1994	Janata Dal	*Sarvashri* Tejpal Singh and Vishambher Singh	Split in Janata Dal	Samata Group	Allowed on 22.7.1994	-
8.	1994	7.9.1994	Bharatiya Communist Party	Shri Afzal Ansari	Split in Bharatiya Communist Party	Samata Group	Allowed on 7.9.1994	-
9.	1995	3.6.1995	Bahujan Samaj Party	Shri Raj Bahadur and 24 others	Split in Bahujan Samaj Party	Bahujan Samaj Party (Raj Bahadur)	Allowed on 3.6.1995	-
10.	1995	23.6.1995	BSP (Raj Bahadur)	Shri Rajendra Kumar and 15 others	Split in BSP (Raj Bahadur)	Bahujan Samaj Party	Allowed on 24.6.1995	

						(Rajendra Kumar)		
11.	1997	20.10.1997	Indian National Congress	Shri Naresh Aggarwal and 18 others	Split in INC	Lokatantrik Congress Party	Allowed on 21.10. 1997	-
12.	1997	20.10.1997	Janata Dal	*Sarvashri* Rajaram Pandey, Rameshray Paswan and Rampal Rajavanshi	Split in Janata Dal	Janata Dal (Rajaram Pandey)	Allowed on 20.10. 1997	-
13.	1997	22.2.2001	Janatantrik Bahujan Samaj Party	Shri Markandeya Chand and 6 other members	Split in Janatantrik Bahujan Samaj Party	Janatantrik Bahujan Samaj Party (Markandaya Chand)	Allowed on 22.2.2001	-
14	2002	3.5.2002	Lok Jana Shakti Party	Shri Rajaram Pandey	Split in Lok Jana Shakti Party	Lok Jana Shakti Party (Rajaram Pandey)	Allowed on 26.8.2002	-
15.	2002	26.11.2002	Janata Dal (U)	Shri Shankhlal Manjhi	Split in Janata Dal (U)	Manjhi Mahawar Shoshit Dal	Allowed on 18.12. 2002	-
16.	2003	28.1.2003	Indian National Congress	Shri Dinesh Singh and 7 others	Split in Indian National Congress	Akhil Bharatiya Congress	Allowed on 28.1.2003	-
17.	2003	3.2.2003	Akhil Bharatiya Congress Party	*Sarvashri* Shyam Narayan Tewari, Kameshwar Upadhyaya, Nawab Kazim Ali Khan and Virendra Singh Bundela	Split in Akhil Bharatiya Congress Party	Ekta Party	Allowed on 3.2.2003	-
18.	2003	11.2.2003	Rashtriya Parivartan Dal	Shri Mehboob Ali	Split in Rashtriya Parivartan Dal	Rashtriya Alpasankhyak Party	Allowed on 11.2.2003	-

19.	2003	29.3.2003	Apna Dal	*Sarvashri* Surendra Singh Patel and Ansar Ahmad	Split in Apna Dal	Vastavik Apna Dal	Allowed on 2.4.2003	-
20.	2003	3.9.2003	Janata Party	Shri Sanjay Garg	Split in Janata Party	Ekta Party	Allowed on 5.9.2003	-
21.	2003	6.9.2003	Bahujan Samaj Party	Shri Rajendra Singh Rana and 36 others	Split in Bahujan Samaj Party	Loktant-rik Bahujan Dal	Allowed on 6.9.2003	-
22.	2003	15.9.2003	Samata Party	Shri Rajaram	Split in Samata Party	Samata Party	Allowed on (Rajaram)	- 17.9.2003
23.	2003	30.9.2003	Samajwa-di Janata Party (Rashtriya)	Shri Ram Govind Choudhary	Split in Sama-jwadi Janata Party	Samajwadi Janata Party (Ram Govind)	Allowed on 1.10.2003 [Subsequ-ently SJP (Ram Govind) merged with Sam-ajwadi Party]	-
24.	2003	4.10.2003	Apna Dal	Shri Ateek Ahmad	Split in Apna Dal	Apna Dal (A)	Allowed on 24.10. 2003	-

Cases of Merger S.63

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	1990	11.1.1990	Lok Dal (B)	*Sarvashri* Mohammad Saeed 'Bhramer'and Ram Tej	Janata Dal	Allowed on 12.1.1990	-
2.	1990	6.6.1990	Janata Party (JP)	Shri Rajadhari	Janata Dal	Allowed on 20.6.1990	-
3.	1994	4.3.1994	Samatawa-di Group	Shri Mitras-en Yadav	Samajwadi Party	Allowed on 4.3.1994	-
4.	1994	30.3.1994	Samata Group	Shri Brahma Shankar Tripathi	Samajwadi Party	Allowed on 30.3.1994	-
5.	1994	24.6.1994	Samata Group	Shri Ashok Kumar Singh Chandel and Others	Samajwadi Party	Allowed on 24.6.1994	-
6	1994	29.6.1994	Pragatish-eel Janata Dal	Shri Narendra Singh and Others	Indian National Congress	Allowed on 29.6.1994	-
7	1994	22.7.1994	Samata Group	*Sarvashri* Tejpal Singh and Vishambhar Singh	Samajwadi Party	Allowed on 25.7.1994	-
8.	1994	7.9.1994	Samata Group	Shri Afzal Ansari,	Samajwadi Party	Allowed on 7.9.1994.	-
9.	1994	24.6.1994	BSP (Rajendra Kumar)	Shri Rajendra Kumar and 15 others	Bahujan Samaj Party	Allowed on 24.6.1994	-
10.	1997	21.4.1997	All India Indira Congress (Tiwari)	*Sarvashri* Hari Shanker Tewari, Jagadambika Pal, Shyam Sunder Sharma & K.C. Singh Baba	Indian National Congress	Allowed on 23.4.1997	-

11.	1999	23.1.1999	Bharatiya Kisan Kamgar Party	Shri Kokab Hameed and 7 others	Lok Dal	Allowed on 17.3.1999	-
12.	2000	4.12.2000	Janata Dal (Raja Ram Pandey)	*Sarvashri* Rajaram Pandey, Ram Pal Rajvanshi and Ram Asre Paswan	Lok Jana Shakti Party	Allowed on 4.12.2000	-
13.	2001	4.3.2001	Janatantrik Bahujan Samaj Party (MC)	Shri Markandeya Chand	Lok Jana Shakti Party	Allowed on 4.3.2001	-
14.	2002	7.10.2002	Lok Jana Shakti Party (Rajaram Pandey)	Shri Rajaram Pandey	Samata Party	Allowed on 8.10.2002	-
15.	2003	6.2.2003	Akhil Bharatiya Congress	*Sarvashri* Rajpal Tyagi, Dinesh Singh, Vinod Kumar Yadav 'Kakka'	Bahujan Samaj Party	Allowed on 2.4.2003	-
16.	2003	3.2.2003	Ekta Party	*Sarvashri* Shyam Narayan Tewari, Kameshwar Upadhyaya, Nawab Kazim Ali Khan and Virendera Singh Bundela	Bahujan Samaj Party	Allowed on 3.2.2003	-
17.	2003	11.2.2003	Rashtriya Alpasankhayak Party	Shri Mehboob Ali	Bahujan Samaj Party	Allowed on 11.2.2003	-
18.	2003	2.4.2003	Vastavik Apna Dal	*Sarvashri* Surendra Singh Patel and Ansar Ahmad	Bahujan Samaj Party	Allowed on 2.4.2003	-
19.	2003	_	Janata Dal (U)	Shri Ajeet Kumar *alias* Raju	Samajwadi Party	Allowed on 2.9.2003	-
20.	2003	1.9.2003	Manjhi Majhwar Shoshit Dal	Shri Shankhalal Manjhi	Samajwadi Party	Allowed on 2.9.2003	-

21.	2003	5.9.2003	Ekta Party	Shri Sanjay Garg	Samajwadi Party	Allowed on 5.9.2003	-
22.	2003	6.9.2003	Loktantrik Bahujan Dal	Shri Rajendra Singh Rana and others	Samajwadi Party	Allowed on 6.9.2003.	-
23.	2003	15.9.2003	Samata Party (Rajaram)	Shri Rajaram	Samajwadi Party	Allowed on 17.9.2003.	-
24.	2003	30.9.2003	Samajwadi Janata Party (Ram Govind)	Shri Ram Govind Chaudhary	Samajwadi Party	Allowed 1.10.2003.	-
25	2003	4.10.2003	Apna Dal (A)	Sh. Ateek Ahmad	Samajwadi Party	Allowed 21.10.2003.	-
26.	2003	30.10.2003	National Lokatantrik Party	Shri Dinanath Kushwaha	Samajwadi Party	Allowed on 30.10.2003	-
27.	2004	20.2.2004	Rashtriya Kranti Party	Shri Kalyan Singh and 3 others	Bharatiya Janata Party	Allowed on 23.2.2004	-

Uttar Pradesh Legislative Council

Cases of Split S.64

Sl.No	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1994	3.3.1994	Janata Dal	*Sarvashri* Jagat Singh, Anurag Shukla, Samar Pal Singh, Kashi Ram, Radhey Shyam Patel, Jagdish Singh and Balbir Singh Debhthua	Split in Janata Dal	Pragatisheel Janata Dal	Allowed on 30.3.1994	-
2.	1994	4.3.1994	Janata Dal	*Sarvashri* Rajendra Singh, Kunwar Pal Singh	Split in Janata Dal	Krantikari Janata Dal	Allowed on 4.3.1994	-
3.	1996	3.9.1996	Samajwadi Party	*Sarvashri* Sunder Singh Baghel, Ramchandra Baksh Singh	Split in Samajwadi Party	Pragatisheel Dal	Allowed on 3.9.1994	-
4.	1996	10.4.1997	Indian National Congress	Shri Jagat Singh	Split in Indian National Congress	Bharatiya Kisan Kamgar Party	Allowed	-

Cases of Merger S.65

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made of	Name of Party merged with	Decision	Remarks, if any.
1.	1993	23.12.1993	Janata Dal (Samajwadi)	Shri Awadh Kumar Singh Baghi	Bharatiya Janata Party	Allowed on 4.3.1994	-
2.	1994	18.3. 1994	Krantikari Janata Dal	*Sarvashri* Rajendra Singh, Kunwar Pal Singh	Samajwadi Party	Allowed on 31.3.1994	-
3.	1994	30.3. 1994	Pragatisheel Janata Dal	*Sarvashri* Jagat Singh, Anurag Shukla, Samar Pal Singh, Kashi Ram, Radhey Shyam Patel, Jagdish Singh and Balbir Singh Debthua	Indian National Congress	Allowed on 31.3.1994	-
4.	1994	4.3 1994	Communist Party of India	Shri Ramchandra Baksh Singh	Samajwadi Party	Allowed on 4.3.1994	-
5	1997	21.4. 1997	Briha Samajwadi Dal	Shri Kashinath	Samajwadi Party	Allowed on 22 4 1997	-

Uttaranchal Legislative Assembly

Cases of Merger S.66

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made by	Name of Party merged with	Decision	Remarks, if any.
1.	2003	Nationalist Congress Party	11.10.2003	Shri Balbeer Singh Negi	Indian National Congress	Allowed on 2.12.2003.	-

West Bengal Legislative Assembly

Cases of Merger S.67

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made of	Name of Party merged with	Decision	Remarks, if any.
1.1.	2001	Purulia Congress Party	27.11.2001	Shri Nepal Mahato	Indian National Congress	Allowed on 20.12.2001.	-

Delhi Legislative Assembly

Cases of Split S.68

Sl.No.	Year	Date when claim for split made	Party from which split claimed	Claim made by	Nature of claim /request made	Name of Breakaway/ splitaway group	Decision	Remarks, if any.
1.	1996	2.4.1996	Janata Dal	*Sarvashri* Ram Vir Singh Bidhuri, Parvez Hashmi and Mateen Ahmad	Split in Janata Dal	Janata Dal (Bidhuri)	Allowed on 12.4.1996	-

Cases of Merger S.69

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made of	Name of Party merged with	Decision	Remarks, if any.
1.	1996	17.4.1996	Janata Dal (Bidhuri)	*Sarvashri* Ram Vir Singh Bidhuri, Parvez Hashmi and Mateen Ahmad	Indian National Congress	Allowed on 6.5.1996	-

Cases where Members were treated Unattached S.70

Sl.No.	Year	Date when claim made	Party from which claim was made	Claim made by	Name(s) of respondent(s)	Nature of claim /request made	Decision	Remarks, if any.
1.	1995	3.8.1995	Congress Legislature Party	Shri Jagprarvesh Chandra	*Sarvashri* Haroon Yusuf and Ajay Maken	Request to treat the respondents unattached members as they were expelled from the party.	Declared unattached on 8.8.1995 and seated separately.	Subsequently both the members were re-inducted into the party and treated as members of the party.

Pondicherry Legislative Assembly

Cases of Disqualification S.71

Sl.No.	Year	Date when Petition given	Name (s) of Petitioner (s)	Name(s) of Respondents(s)	Grounds	Decision	Remarks, if any
1.	1986	_	*Sarvashri* P.R. Loganathan, P.Purushotthaman, S. Ramassamy and R. Somasundaram	Shri K. Anbalagan and Dr. M.A.S. Subramaniun	Voluntarily giving up membership of AIADMK	Allowed on 12.4.1986 Respondents disqualified	-
2.	1990	_	Shri V. Pethaperumal	*Sarvashri* P. Rajavelu and K. Deivanayagam	Voluntarily giving up membership of Janata Dal	Dismissed On 26.12.1990	-
3.	1997	1.8.1990	Shri S. Jothi Narayanaswamy (Non MLA) and Shri V. Vaithilingam	Shri P.Kannan	Joined a political party (TMC) despite being elected as an Independent member	Dismissed On 21.5.1997	-
4.	2000	20.12.1999	Shri R. Viswanathan	Shri M.Manjini	Voluntarily giving up membership of CPI	Allowed on 8.9.2000 Respondent disqualified	-
5.	2000	_	*Sarvashri* C. Jayakumar and M. Kandasamy	*Sarvashri* S. Rathinam @ Manohar, K. Rajasekaran and A. Elumalai	Voluntarily giving up membership of TMC (Moopanar)	Allowed on 25.12.2000 Respondents disqualified	Decision of Speaker was challenged. High Court set aside the decision of Speaker.

Cases of Merger S.72

Sl.No.	Year	Party seeking merger	Date when claim for merger made	Claim made of	Name of Party merged with	Decision	Remarks, if any.
1.	2001	Puducherry Makkal Congress	5.11.2001	Shri K. Lakshminara-yanan	Indian National Congress	Allowed on 9.11.2001	-
2.	2002	Tamil Maanila Congress (Moopanar) Party	4.9.2002	Shri A. Namassivayam	Indian National Congress	Allowed on 5.9.2002	-

TABLES

Lok Sabha

Petitions for disqualification **T 1**

Total no. of petitions (cases)	No. of petitions under para 2(1) (a)	No. of petitions under para 2(1) (b)	Petitions allowed	Petitions dismissed	Petitions rendered infructuous	No. of MPs disqualified
39 (16)	21	18	13	19	7	13*

Cases of Splits **T 2**

Total no. of cases	Cases allowed	Cases dismissed	Lapsed due to dissolution of Lok Sabha
22	20	-	2

Cases of Mergers **T 3**

Total no. of cases	Cases allowed	Cases disallowed
13**	12	1

* Of these 13, four members who were disqualified during the Tenth Lok Sabha filed Civil Writ Petitions in the High Court of Delhi praying for the stay on the order of the Speaker, Tenth Lok Sabha disqualifying them. The High Court granted stay on the order of the Speaker till disposal of the Writ Petitions. Before the Writ Petitions could be disposed of, the Tenth Lok Sabha was dissolved. Consequently, the said four members continued to be members of the Tenth Lok Sabha till its dissolution. Hence, in net effect though 13 members were declared disqualified, actually nine members of Lok Sabha stood disqualified.

** In Lok Sabha, there have also been seven cases of nominated members joining another political party within the stiputlated period of 6 months under para 2(3) of Tenth Schedule to the Constitution.

Cases where members were declared unattached **T 4**

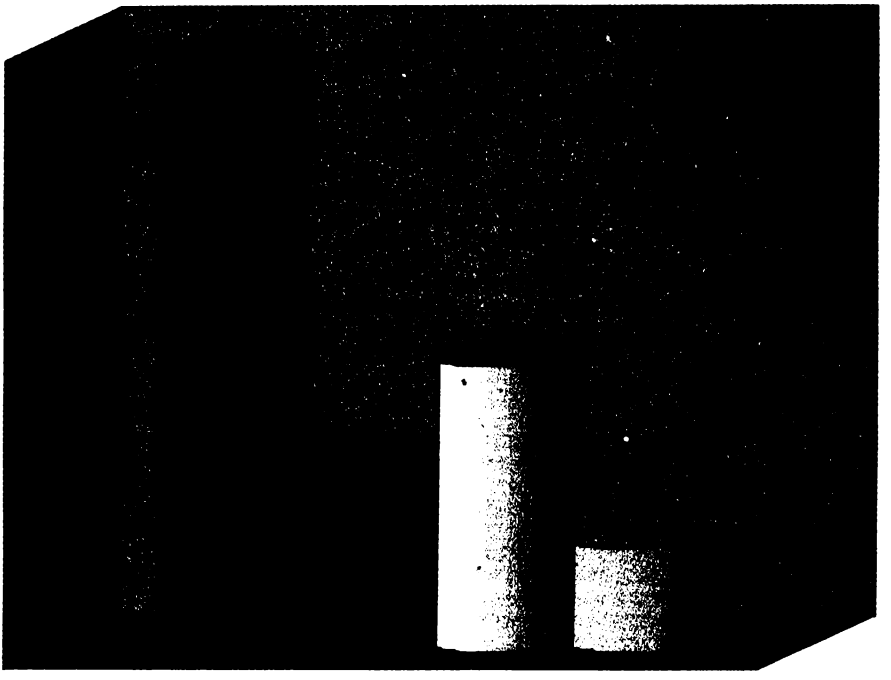
	Total no. of cases	Cases allowed	Cases disallowed	No. of MPs declared unattached
8th Lok Sabha	6	6	-	10
9 Lok Sabha*	1	1	-	25
Total	7	7	-	35

* Tenth Schedule to the Constitution does not contain provisions to cope with situations arising out of expulsion of members from primary membership of their political parties. Consequent upon the decision of the Speaker, Tenth Lok Sabha in the Janata Dal Case, dated 1 June, 1993, the practice in Lok Sabha has been to seat the expelled members separately without any change in their party affiliation, in party position, etc. in Lok Sabha. Hence, since then practice of treating members unattached has been done away with in Lok Sabha

G 1

Lok Sabha

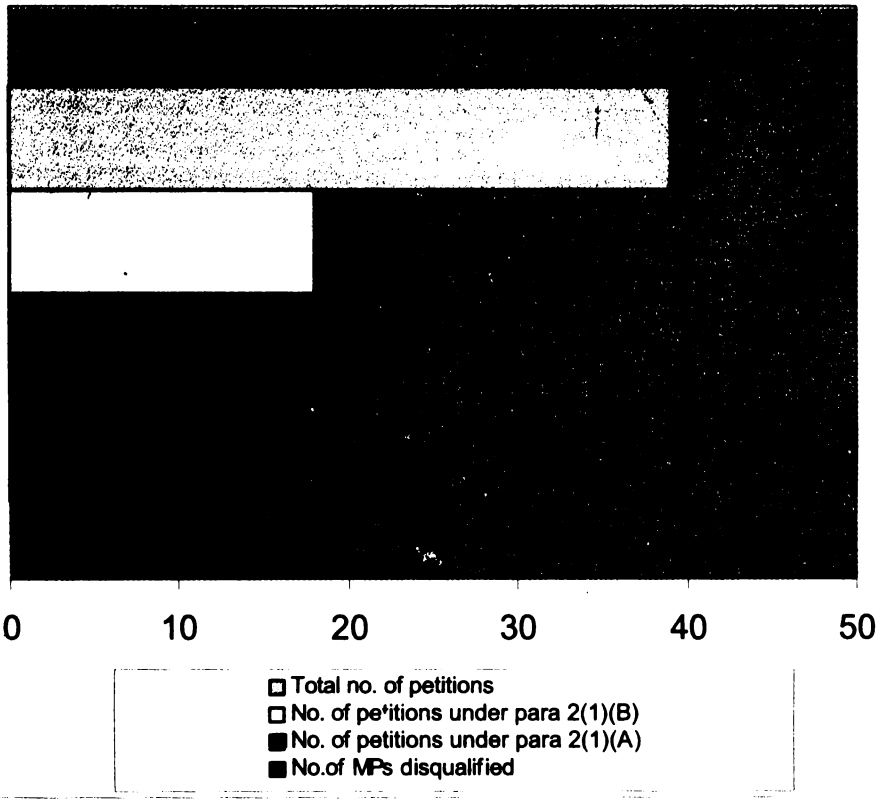
Petitions for disqualification (Allowed/Disallowed)



■ Total no. of petitions
□ Petitions disallowed
■ Petitions allowed
□ Petitions rendered infructuous

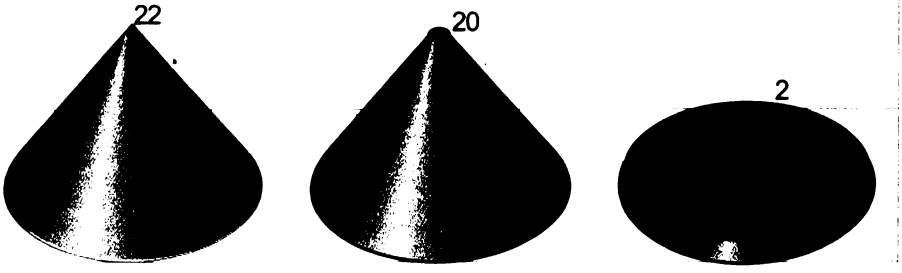
G 2

Petitions for disqualification (Grounds/No. of members disqualified)



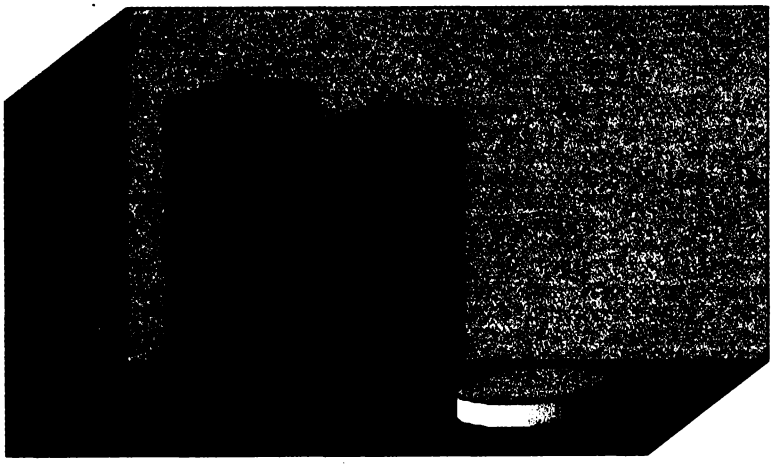
G 3

Cases of Splits



G 4

Cases of Mergers



■ Total no. of cases ■ Allowed □ Disallowed

Rajya Sabha

Cases of disqualification T 5

Total no. of petitions (cases)	No. of petitions (cases) under para 2(1) (a)	No. of petitions (cases) under para 2(1) (b)	Petitions allowed	Petitions dismissed	Petitions rendered infructuous/not admitted/ inadmissible, etc	Total no. of MPs disqualified
2 (2)	2 (2)	-	2	-	-	2

Cases of Splits T 6

Total no. of cases	Cases allowed	Cases dismissed
10	10	-

Cases of Mergers T 7

Total no. of cases	Cases allowed	Cases disallowed
13	13	-

State Legislative Assemblies#

Cases of disqualification **T 8**

Sl No.	Assembly	Total no. of cases (petitions)	No. of cases (petitions)* under para 2(1) (a)	No. of cases (petitions) ** under para 2(1) (b)	Cases allowed	Cases dismissed	Cases rendered infructuous /not admitted inadmissi-ble, etc (petitions)	Total no. of MLAs dis-qualified
1.	Andhra Pradesh	1(1)	1(1)	-	1	-	-	1
2.	Arunachal Pradesh	-	-	-	-	-	-	-
3.	Assam	2(2)	2(2)	-	1	1	-	7
4.	Bihar	1(1)	-	1(1)	-	1	-	-
5.	Chhattisgarh	-	-	-	-	-	-	-
6.	Goa	10(19)	9(18)	1(1)	3	7	-	12
7.	Gujarat	1(1)	-	1(1)	1	-	-	1
8.	Haryana	18(23)	18(19)	4(4)	8	10	-	11
9.	Himachal Pradesh	1(1)	1(1)	-	-	1	-	-
10.	Jammu & Kashmir	-	-	-	-	-	-	-
11.	Jharkhand	-	-	-	-	-	-	-
12.	Karnataka	2(2)	2(2)	-	-	2	-	-
13.	Kerala	2(2)	2(2)	-	1	1	-	1
14.	Madhya Pradesh	3(3)	3(3)	-	3	-	-	8
15.	Maharashtra	5(7)	5(6)	1(1)	5	-	-	7
16.	Manipur	9(9)	9(9)	-	8	1	-	9
17.	Meghalaya	6(6)	3(3)	3(3)	3	3	-	7
18.	Mizoram	1(2)	1(2)	-	-	1	-	-
19.	Nagaland	3(7)	3(7)	-	3	-	-	15
20.	Orissa	3(3)	3(3)	-	2	1	-	2
21.	Punjab	2(2)	1(1)	1(1)	2	-	-	23
22	Rajasthan	4(5)	3(4)	1(1)	-	4	-	-

\# Figures in this Table are based on information received from the State Legislative Assembly Secretariats. While Jammu & Kashmir Assembly has intimated that there has been no case under Anti-defection Law, no information is available in case of Jharkhand and Tripura.

*and ** while in some cases petitions were filed under both paras 2(1) (a) and 2(1) (b), in some other cases multiple petitions were filed.

23.	Sikkim	3(3)	3(3)	-	-	3	-	-
24.	Tamil Nadu	2(3)	2(3)	-	2	-	-	3
25.	Tripura	-	-	-	-	-	-	-
26.	Uttar Pradesh	13(53)	2(27)	12(26)	-	3	10(10)	-
27.	Uttaranchal	-	-	-	-	-	-	-
28.	West Bengal	-	-	-	-	-	-	-
29.	Delhi Vidhan Sabha	-	-	-	-	-	-	-
30.	Pondichery	5(9)	5(9)	-	3	2	-	6
	Total	97(164)	78(125)	25(39)	46	41	10	113

Cases of Splits * T 9

Sl. No.	Assembly	Total no. of cases	Cases allowed	Cases dismissed
1.	Andhra Pradesh	-	-	-
2.	Arunachal Pradesh	1	1	-
3.	Assam	1	1	-
4.	Bihar	3	3	-
5.	Chhattisgarh	2	2	-
6.	Goa	-	-	-
7.	Gujarat	1	1	-
8.	Haryana	6	6	-
9.	Himachal Pradesh	4	4	-
10.	Jammu & Kashmir	-	-	-
11.	Jharkhand	-	-	-
12.	Karnataka	1	1	-
13.	Kerala	3	3	-
14.	Madhya Pradesh	-	-	-
15.	Maharashtra	7	7	-
16.	Manipur	-	-	-
17.	Meghalaya	4	4	-
18.	Mizoram	1	1	-
19.	Nagaland	5	5	-

* Figures in this Table are based on information received from the State Legislative Assembly Secretariats. While Jammu & Kashmir Assembly has intimated that there has been no case under Anti-defection Law, no information is available in case of Jharkhand and Tripura.

20.	Orissa	-	-	-
21.	Punjab	1	1	-
22.	Rajasthan	1	1	-
23.	Sikkim	2	2	-
24.	Tamil Nadu	-	-	-
25.	Tripura	-	-	-
26.	Uttar Pradesh	24	24	-
27.	Uttaranchal	-	-	-
28.	West Bengal	-	-	-
29.	Delhi Vidhan Sabha	1	1	-
30.	Pondichery	-	-	-
	Total	68	68	-

Cases of Mergers * T 10

Sl. No.	Assembly	Total no. of cases	Cases allowed	Cases disallowed
1.	Andhra Pradesh	-	-	-
2.	Arunachal Pradesh	3	3	-
3.	Assam	2	2	-
4.	Bihar	7	7	-
5.	Chhattisgarh	2	2	-
6.	Goa	-	-	-
7.	Gujarat	5	5	-
8.	Haryana	11	11	-
9.	Himachal Pradesh	5	5	-
10.	Jammu & Kashmir	-	-	-
11	Jharkhand	-	-	-
12.	Karnataka	-	-	-
13.	Kerala	-	-	-
14.	Madhya Pradesh	-	-	
15.	Maharashtra	8	8	-
16.	Manipur	1	1	
17.	Meghalaya	-	-	-

* Figures in this Table are based on information received from the State Legislative Assembly Secretariats. While Jammu & Kashmir Assembly has intimated that there has been no case under Anti-defection Law, no information is available in case of Jharkhand and Tripura.

18.	Mizoram	-	-	-
19.	Nagaland	2	2	-
20.	Orissa	-	-	-
21.	Punjab	3	3	-
22.	Rajasthan	-	-	-
23.	Sikkim	-	-	-
24.	Tamil Nadu	-	-	-
25.	Tripura	-	-	-
26.	Uttar Pradesh	27	27	-
27.	Uttaranchal	1	1	-
28.	West Bengal	1	1	-
29.	Delhi Vidhan Sabha	1	1	-
30.	Pondichery	2	2	-
	Total	81	81	-

Cases where members were declared unattached in State Legislative Assemblies≠ **T 11**

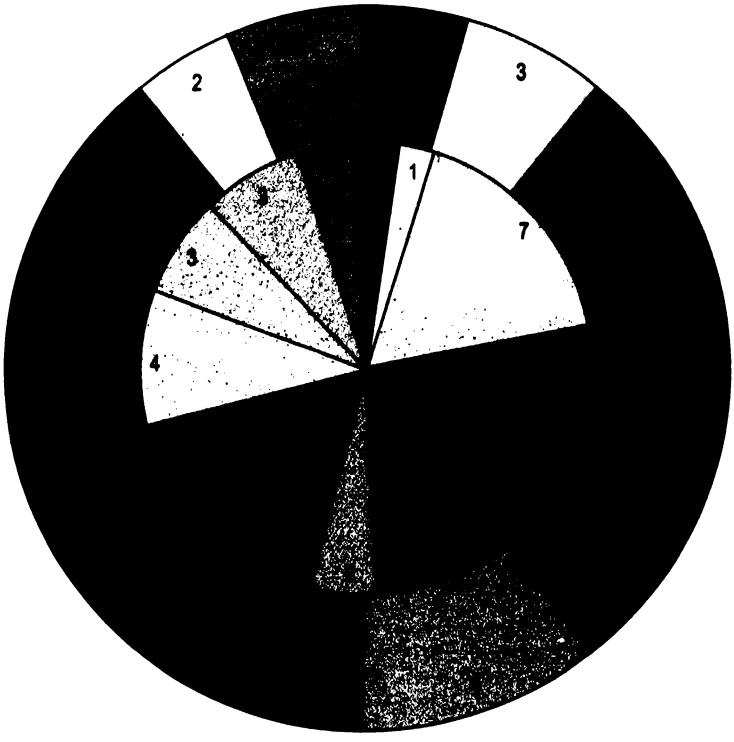
Sl. No. MLAs	Assembly	Total no. cases	Allowed	Cases disallowed	Total no. of declared unattached
1.	Andhra Pradesh	-	-	-	-
2.	Arunachal Pradesh	-	-	-	-
3.	Assam	-	-	-	-
4.	Bihar	-	-	-	-
5.	Chhattisgarh	1	1	-	1
6.	Goa	-	-	-	-
7.	Gujarat	-	-	-	-
8.	Haryana	1	1	-	1
9.	Himachal Pradesh	-	-	-	-
10.	Jammu & Kashmir	-	-	-	-
11.	Jharkhand	-	-	-	-
12.	Karnataka	-	-	-	-

≠ Figures in this Table are based on information received from the State Legislative Assembly Secretariats. While Jammu & Kashmir Assembly has intimated that there has been no case under Anti-defection Law, no information is available in case of Jharkhand and Tripura.

13.	Kerala	-	-	-	-
14.	Madhya Pradesh	-	-	-	-
15.	Maharashtra	-	-	-	-
16.	Manipur	-	-	-	-
17.	Meghalaya	-	-	-	-
18.	Mizoram	-	-	-	-
19.	Nagaland	-	-	-	-
20.	Orissa	-	-	-	-
21.	Punjab	-	-	-	-
22.	Rajasthan	-	-	-	-
23.	Sikkim	-	-	-	-
24.	Tamil Nadu	-	-	-	-
25.	Tripura	-	-	-	-
26.	Uttar Pradesh	-	-	-	-
27.	Uttaranchal	-	-	-	-
28.	West Bengal	-	-	-	-
29.	Delhi Vidhan Sabha	2	2		2
30.	Pondicherry	-	-	-	-
	Total	4	4	-	4

G 5

State Legislative Assemblies
Cases of disqualification
(No. of Cases allowed/disallowed)

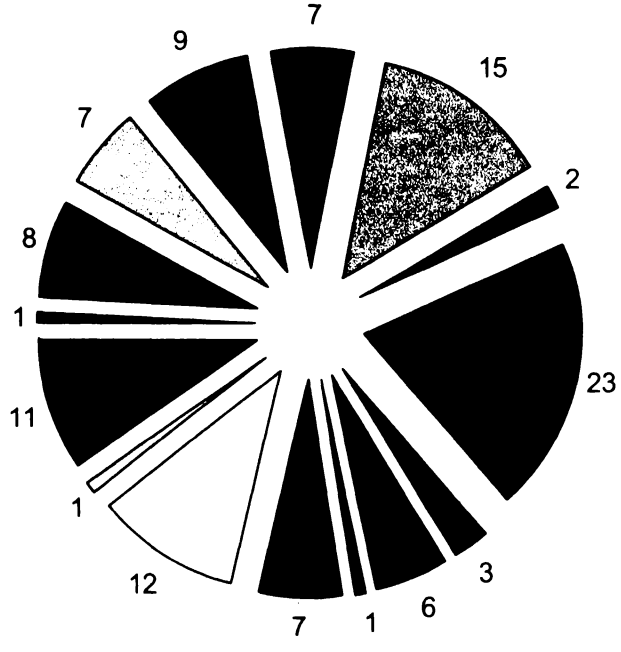


Outer circle : Allowed
Inner circle : Disallowed
(Figures in graph show no. of cases)

Andhra Pradesh	Assam	Bihar	Goa	Gujarat	Haryana
Himachal Pradesh	Karnataka	Kerala	Madhya Pradesh	Maharashtra	Manipur
Meghalaya	Mizoram	Nagaland	Orissa	Punjab	Rajasthan
Sikkim	Tamil Nadu	Uttar Pradesh	Pondicherry		

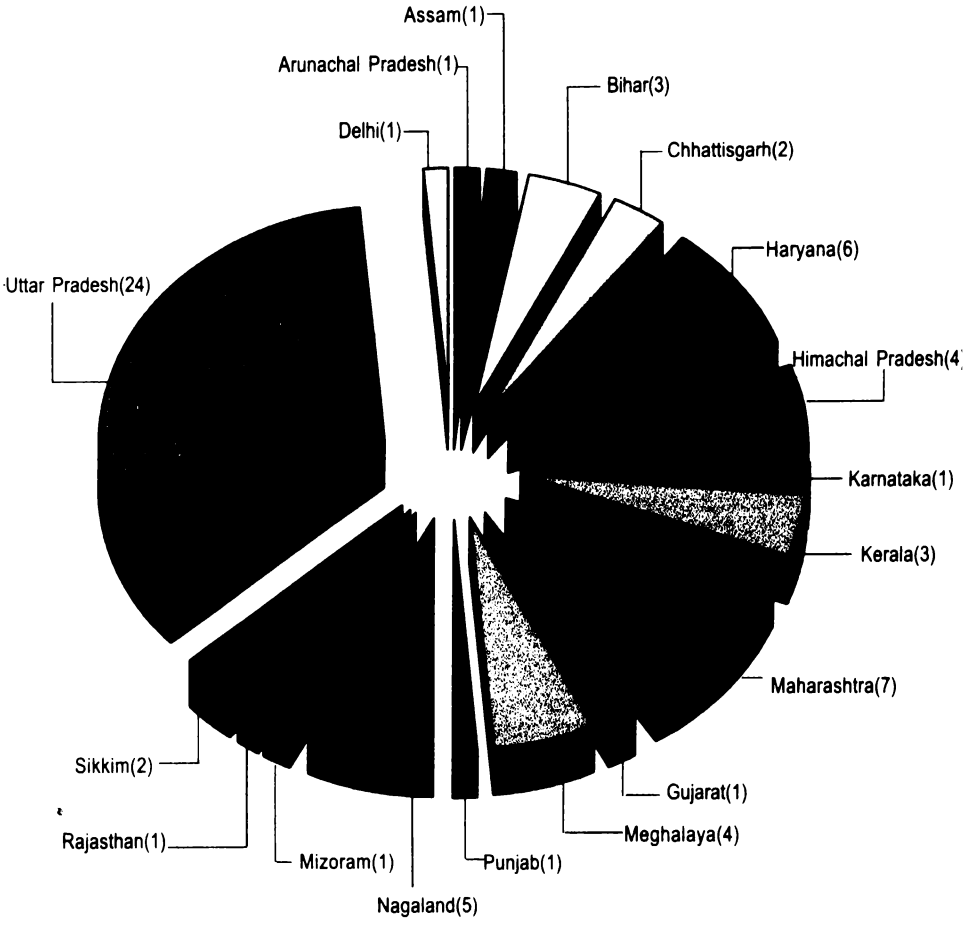
G 6

Cases of disqualification (No. of MLAs disqualified)



G 7

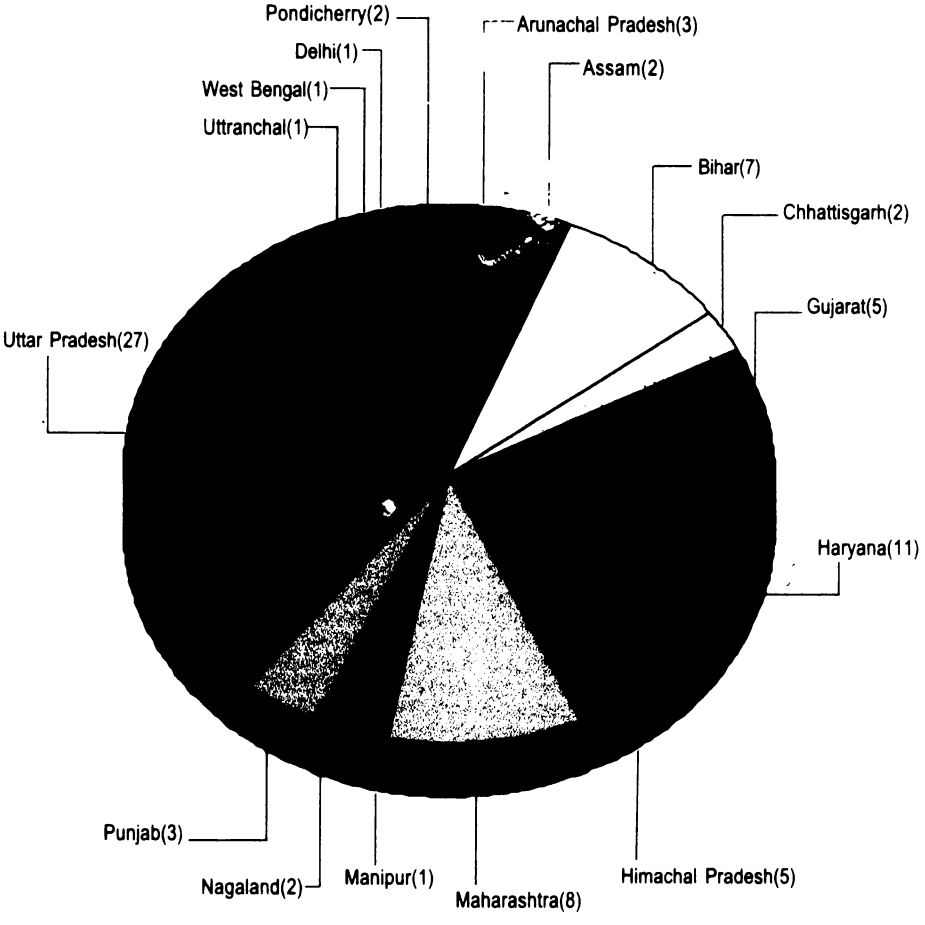
Claims of Split (68)*



* All 68 claims allowed.

G 8

Claims of Merger (81)*



* All 81 claims allowed

State Legislative Councils+

Cases of Disqualification T 12

Cases of Splits* T 13

Sl. No.	Council	Total no. of cases	Cases allowed	Cases dismissed
1.	Bihar	-	-	-
2.	Jammu & Kashmir	-	-	-
3.	Karnataka	3	3	-
4.	Maharashtra	-	-	-
5.	Uttar Pradesh	4	4	-
	Total	7	7	-

Cases of Mergers ≡ T 14

Sl. No.	Council	Total no. of cases	Cases allowed	Cases dismissed
1.	Bihar	-	-	-
2.	Jammu & Kashmir	-	-	-
3.	Karnataka	2	2	-
4.	Maharashtra			-
5.	Uttar Pradesh	5	5	-
	Total	7	7	-

\+ As per information received, there is no case of disqualification in Karnataka Legislative Council and Uttar Pradesh Legislative Council. No information is available in respect of other three Legislative Councils.

*≡ Figures in This Table are based on information received from State Legislative Councils Secretairets. No information is available in respect of Bihar, Jammu and Kashmir and Maharashtra Legislative Councils.

C. JUDICIAL PRONOUNCEMENTS

Punjab & Haryana High Court

*Prakash Singh Badal and Others vs. Union of India and Others**

The Court in their majority judgment allowed the appeals to the extent that the order of the Speaker disqualifying the appellants was quashed. As regards constitutionality of the Tenth Schedule, the Court held:

- *Para 6(1) of the Tenth Schedule does not have the effect of excluding the jurisdiction of High Court and Supreme Court – Hence this para does not require ratification under Article 368 of the Constitution.*
- *Para 7 of the Tenth Schedule precludes judicial review of decisions of Presiding Officers under the Tenth Schedule by High Courts and Supreme Court – Hence, this provision requires ratification under Article 368 – Para 7 was not got ratified – Hence it is invalid for non-compliance of Article. 368.*
- *Para 2(1)(b) of Tenth Schedule not violative of Article 105.*
- *Order of Presiding Officer on claim for split is not an order/decision under para 6 of Tenth Schedule.*

The Court in their majority judgment allowed the appeals.

Facts of the case

Shiromani Akali Dal Legislature Party in Punjab Vidhan Sabha comprised of 73 MLAs. A breakaway group of Akali Dal Legislature Party comprising of 27 MLAs on 7 May 1986, submitted a memorandum to the Speaker Shri Ravi Inder Singh, in which after recalling the fact that they were elected on the Shiromani Akali Dal (Longowal) ticket to the Punjab Vidhan Sabha and that on account of fundamental differences with S. Surjit Singh Barnala, Chief Minister, Punjab and the leader of the Legislature Party and on the issue of police entry into the holy precincts of *Shri Harmandir Sahib,* they intimated about their decision to form a separate legislative group of the Shiromani Akali Dal as a consequence of the split in the political party. They made a request to the Speaker to accord

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recognition to their group and allot them separate seats in the Punjab Vidhan Sabha.

2. Each member, who had signed Memorandum, submitted a declaration to the Speaker on 8 May 1986. In this declaration, each member acknowledged the fact that they had signed, along with others, the application jointly submitted to the Speaker voluntarily, of his free will and without any duress from any person or political party.

3. On 8 May 1986, the Speaker passed an order, whereby he recognized the new group of the breakaway Akali Dal Legislature Party as a separate political party and ordered that they be given separate seats in the Assembly. In that order, he also held that the new breakaway group represented a faction that had emerged as a result of the split in the original party and the membership of the new group comprised of more than one-third of the Legislature party whose effective strength (excluding the Speaker), was then 72. The Speaker, therefore, held that the members of the breakaway group did not incur any disqualification.

4. On the same date, the Secretary, Punjab Vidhan Sabha issued a Press note in substance to the same effect as was the order of the Speaker.

5. On 27 May 1986, the Speaker, Shri Ravi Inder Singh, tendered his resignation. The Deputy Speaker of the Punjab Vidhan Sabha, Shri Nirmal Singh Kahlon became the Minister on 6 May 1986. Thus, both the offices of the Speaker and Deputy Speaker became vacant. Thereafter, the Governor of Punjab summoned the House to meet on 2 June 1986 on which date the House was to elect the Speaker and the Deputy Speaker, besides transacting other business. The members of the breakaway Akali Dal Legislature Party were allotted separate seats in the Legislative Assembly, which was presided over by *Pro tem* Speaker Pt. Mohan Lal. The breakaway group set up S. Arjun Singh Litt to contest for the office of the Speaker and Dr. S.S. Mohi for the office of the Deputy Speaker and a whip to vote for them was issued to the members of this group by Shri Amarinder Singh, leader of the group. The original Shiromani Akali Dal Legislature Party headed by Shri Surjit Singh Barnala, Chief Minister, Punjab, set up Shri Surjit Singh Minhas for the office of the Speaker and Shri Jaswant Singh for the office of the Deputy Speaker. The candidates set up by Shri Surjit Singh Barnala were elected Speaker and the Deputy Speaker securing 46 votes each, whereas the candidates put up by the breakaway Akali Dal Legislature Party secured 26 votes each.

Thereafter on 2 June 1986, Shri Amarinder Singh made an application to the Speaker, wherein he made a request to the Speaker to be recognized as leader of the breakaway group of Akali Dal.

6. On 11 June 1986, Shri Surjit Singh Barnala submitted a petition to the Speaker,

under article 191, clause (2), read with paras 2 and 6 of the Tenth Schedule. In his petition, Shri Surjit Singh Barnala made a prayer to the Speaker to declare the members mentioned in that petition disqualified from being members of the House (Punjab Vidhan Sabha) as they had Shri Prakash Singh Badal and 22 other MLAs for having voted against the two candidates set up by the Shiromani Akali Dal for the office of Speaker and the Deputy Speaker, contrary to the whip issued by him (Shri Surjit Singh Barnala) who was the Leader of the Shiromani Akali Dal Legislature Party, without obtaining the prior permission of the party or any other person or authority, competent to grant such permission. It was contended that these members had incurred disqualification in terms of Para 2(1)(b) of the Tenth Schedule.

7. On receipt of this petition, the Speaker, Shri Surjit Singh Minhas issued a show cause notice to the respondents. The Speaker also rejected the application dated 2 June 1986 of Shri Amarinder Singh wherein he requested to be recognised as leader of the breakaway group, *vide* order dated 4 July 1986. It was under these circumstances that the respondents *i.e.* the members against whom petition for disqualification was given, filed writ petitions in the High Court of Punjab, whereby they challenged the notice dated 13 June 1986 issued to them individually by the Speaker of the Assembly, Shri Surjit Singh Minhas requiring them to show cause as to why they be not disqualified from the membership of the Punjab Legislative Assembly in terms of disqualification provisions of the Tenth Schedule to the Constitution of India. They had also challenged the order of the Speaker dated 4 July 1986 whereby he rejected the application dated 2 June 1986 of Shri Amarinder Singh, MLA in which he had claimed to be recognised as the Leader in the Legislative Assembly of 27 MLAs belonging to the Shiromani Akali Dal (hereinafter referred to as the breakaway Akali Dal Legislature Party).

8. They also *inter alia* contended that they had successfully contested the Legislative Assembly elections, held in September 1985, on Shiromani Akali Dal ticket and were still members of the Punjab Legislative Assembly; that the Commando attack ordered by the State of Punjab at the instance of Shri Surjit Singh Barnala, Chief Minister of Punjab, on *Shri Harmandir Sahib* (Golden Temple), at Amritsar, on 30 April 1986, hurt the religious feelings of the people in general and the Sikhs in particular; that the ordering of the Commando attack was contrary to the stated political philosophy of Shiromani Akali Dal as was evident from its manifesto issued in 1985 General Elections in which it had strongly criticised the attack on the Golden Temple in June 1984.

9. This position was also reflected in the writ petitions filed by the

respondents (hereinafter referred to as petitioners) in the High Court. The petitioners along with a number of other party men expressed disapproval of the said Commando attack of April 1986. A majority of the functionaries of the Shiromani Akali Dal, including its office-bearers and District Jathedars disapproved this action and resigned from their posts in protest. The petitioners submitted in their writ petitions that in order to maintain the tradition of principled politics of the Shiromani Akali Dal and to ensure consistency in respect of fundamental political and religious issues directly affecting the party, they submitted a memorandum to the Speaker of the Punjab Vidhan Sabha on 7 May 1986.

10. Since all the writ petitions (Civil Writ Petitions Nos. 3066, 3268 and 3435 of 1986), involved common questions of law and facts, the same were taken up for consideration together.

11. Separate written statements were filed by Shri Surjit Singh Minhas and S. Surjit Singh Barnala. In the written statement filed by Shri Surjit Singh Minhas, several legal objections were taken against the maintainability of the writ petitions and the issuance of the notices and the order of the incumbent Speaker were claimed to be in accordance with law, whereas the order of his predecessor was stated to be without jurisdiction. In the written statement filed by Shri Surjit Singh Barnala, apart from taking certain legal pleas by way of preliminary objections, the averments regarding the public reaction because of the police entry in the Golden Temple Complex and the resultant split in the Shiromani Akali Dal were denied. It was further averred that it was for the first time on 30 June 1986 that news item appeared in 'The Tribune' which indicated that the breakaway group was contemplating to call a session of the delegates to elect new President.

12. The constitutionality of the Constitution (Fifty-second Amendment) Act was challenged by Shri Shanti Bhushan, the Counsel for the petitioners on the ground that it has eroded the basic structure of the Constitution in three ways namely that clause(b) of para 2 was destructive of the parliamentary democracy and the federal structure, the two basic features of the Constitution and paras 6 and 7 of the Tenth Schedule precluded judicial review of the High Court and the Supreme Court under articles 226, 32 and 136 of the Constitution. It was also contended that as the said provisions aimed to make changes in Chapter IV of Part V and Chapter V of Part VI, which contain articles 136 and 226, the Bill required ratification by the Legislatures of not less than one half of the States as envisaged by proviso to article 368(2) of the Constitution and the same having been not done, the entire Act was stillborn and invalid.

Decision/Judgment of the Court

The Full Bench of the Punjab & Haryana High Court comprising of Chief Justice H.N. Seth and Justices D.S. Tewatia, R.N. Mittal, S.P. Goyal and J.V. Gupta delivered their judgment in the matter on 1 May 1987. While majority view was taken by Chief Justice H.N. Seth and Justices R.N. Mittal, and S.P. Goyal, the minority view was taken by Justices D.S. Tewatia and S.P. Goyal.

The Court in their majority judgment allowed the appeals to the extent that the order of the Speaker disqualifying the appellants was quashed. As regards constitutionality of the Tenth Schedule, the Court held as follows:

* *Para 6(1) of the Tenth Schedule does not have the effect of excluding the jurisdiction of High Court and Supreme Court - Hence this para does not require ratification under article 368 of Constitution.*
* *Para 7 of the Tenth Schedule precludes judicial review of decisions of Presiding Officers under the Tenth Schedule by High Courts and Supreme Court — Hence this provision requires ratification under article 368 — Para 7 was not got ratified - Hence is invalid for non-compliance of Article 368.*
* *Para 2(1)(b) of the Tenth Schedule not violative of article 105.*
* *Order of Presiding Officer on claim for split is not an order/decision under para 6 of the Tenth Schedule.*

The Court in their majority judgment allowed the appeals.

The following is the majority judgment of the Court:—

(i) "The contention pertaining to the requirement of ratification of the Amendment Act may be examined at the outset because if it prevails, it would obviate the necessity of going into other grounds of challenge to the constitutional validity of the impugned Act. However, for the disposal of this contention, the scope of paras 6 and 7 of the Amendment Act has to be determined *vis-a-vis* the power of judicial review of the High Court and the Supreme Court under articles 226, 32 and 136. .....So far as the provision contained in para 6(1) is concerned, the contention raised was that by making the decision of the Speaker final, the jurisdiction of the High Court under article 226 and of the Supreme Court under article 136 stands excluded. Shri G. Ramaswamy, the learned Additional Solicitor–General of India, did not dispute the stand taken by Shri Shanti Bhushan (Counsel for petitioners) but took another extreme stand that the power of judicial

review was confined to the question of constitutionality of the statutes and it does not cover in its purview the power to review the orders of the constitutional functionaries or other authorities under the statutes and that the Parliament is fully competent to enact a provision declaring such orders beyond the power of judicial review of the High Court or the Supreme Court.....

(ii) The use of the word 'final' *qua* any order passed by any authority under a provision of the Constitution or other statutes has always been understood to imply that no appeal, revision or review lies against that order and not that it overrides the power of judicial review either of the High Court or the Supreme Court under article 226 or article 136 of the Constitution. It is not necessary to dilate on this matter any further as it stands settled authoritatively by a judgment of the Supreme Court in *Union of India v. Jyoti Parkash, AIR 1971 SC 1093* wherein the provisions of article 217(3) which provide that if any question arises as to the age of a Judge of High Court, the question shall be decided by the President after consultation with Chief Justice of India and the decision of the President shall be final, came under consideration and the import of the word "final" was enunciated thus :— Para 31 :

'The President acting under article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President, the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral consideration or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But this Court will not sit in appeal over the judgment of the President, nor will the Courts determine the weight which should be attached to the evidence. Appreciation of evidence is entirely left to the President and it is not for the Courts to hold that on the evidence placed before the President on which the conclusion is founded, if they were called upon to decide the case they would have reached some other conclusion'.

I am, therefore, of the considered view that the provisions of para 6(1) do not have the effect of excluding the jurisdiction of the High

Court under article 226 or of the Supreme Court under article 136 of the Constitution".

(iii) "As regards the provision contained in para 7, did not dispute Shri G. Ramaswamy, that it has the effect of the exclusion of the jurisdiction of the High Court and the Supreme Court under articles 226 and 136 respectively in respect of any matter connected with the disqualification of a member of a House, but contended that in spite thereof the Bill did not require any ratification as canvassed by Shri Shanti Bhushan. The reasons advanced for this view shall be noticed later as it would be proper to deal with the contentions raised by Shri D.D. Thakur prior thereto, who took the stand that the provision of the said para does not exclude the power of judicial review of the High Court or the Supreme Court so far as the order of the Speaker was concerned. The argument put forward by him was twofold. First, that the word 'jurisdiction' as held by the Supreme Court in *Ujjam Bai v. State of Uttar Pradesh AIR 1962 SC 1621* means the authority to decide and, as such, the bar contained in this para only relates to the primary decision and not its review by the High Court or the Supreme Court. Second, that the words 'any matter' would not include the order of the Speaker. I regret my inability to subscribe to this view. If para 7 is interpreted in the manner suggested by Shri Thakur, then the provision contained therein would be rendered wholly superfluous because the jurisdiction to decide, in the first instance has been exclusively vested in the Speaker and his order has also been made final which, necessarily means that no court would have the jurisdiction to take cognizance of any question relating to the disqualification of a member of a House under the Tenth Schedule. Moreover, if the intention was not to exclude the jurisdiction of the High Court and the Supreme Court under article 226 or article 136, there was no necessity to incorporate the *non-obstante* clause, that is, notwithstanding anything contained in the Constitution, in this para. Under the Constitution, it is only High Court and the Supreme Court which have the jurisdiction to issue writs and review the decisions of the Courts and Tribunals subordinate to them. Obviously the incorporation of the *non-obstante* clause, therefore, was meant to exclude the jurisdiction of the High Court and the Supreme Court and if that is so, the word 'matter' has to be necessarily understood to include

as well the order of the Speaker passed under para 6. There is, thus, no escape from the conclusion that para 7 has the effect of excluding the jurisdiction of the Supreme Court as well as the High Court under "articles 136 and 226 in respect of any matter connected with the disqualification of a member of a House under the said Schedule".

(iv) "In the present case an additional disqualification has been provided and jurisdiction to decide any question relating to this matter has been vested in the Speaker whose decision has been made final in enacting para 7. The Speaker is seized of the matter when a question is raised that a member has incurred the disqualification under the Tenth Schedule. He is therefore, required to give a decision on a disputed question involving a very valuable right of elected member of the Lok Sabha and the Vidhan Sabha. Obviously the decision of the Speaker would be amenable to the jurisdiction of judicial review of the High Court and Supreme Court but for the provision contained in para 7. In view of the decision of the Supreme Court in Jyoti Prakash's case (AIR 1971 SC 1093), wherein it was held that the President acting under article 217(3) performs a judicial function of grave importance under the scheme of the Constitution. The conclusion is, therefore, irresistible that by enacting para 7, the powers of the Supreme Court and the High Court under articles 136 and 226 respectively, have been directly effected and taken away so far as the disqualification of a member of the Lok Sabha or the Vidhan Sabha under the Tenth Schedule is concerned."

(v) "As the amendment contained in para 7 of the Tenth Schedule was not got ratified by one-half of the States in terms of the proviso to clause(2) of article 368, the same is held to be *ultra vires* and unconstitutional."

(vi) "The question which still remains to be determined is as to what would be the effect of the para 7 having been declared unconstitutional on the remaining provisions of the Fifty-second Amendment Act. Shri Shanti Bhushan, the learned counsel for the petitioners, argued that the said para being an integral part of the Amendment Act, the whole Act has to be struck down. The answer to the question, does not depend on the fact whether the provision struck down is an integral part of the Amendment Act or not. What is to be seen is as to whether the remaining portion of the Act would be workable without para 7 or not. The working of the remaining provisions of the Tenth Schedule is

in no way dependant on para 7. The purpose of the said provision is to lay down an additional disqualification and the authority to determine the question if any member has incurred the disqualification or not is named in para 6. Even if the provisions of para 7 are omitted, it would not affect the working of the other provisions of the Tenth Schedule and the only effect would be that the order of the Speaker would become amenable to the jurisdiction of the Supreme Court and High Court under articles136 and 226. Therefore, whole of the Amendment Act would not be liable to be struck down because of para 7 having been declared unconstitutional".

(vii) "As noted above, the attack against the provisions of clause(b) of para 2 is that its provisions are destructive of the Parliamentary democracy and the federal structure, the two basic features of the Constitution. So far as the federal structure of the Constitution is concerned, the argument put forward by Shri Shanti Bhushan was that a directive can be issued by the President of an all India Party, say the Janata Party under the said provision to the party legislators in Karnataka to support a Bill moved by Bharatiya Janata Party to adopt Hindi as the official language of the State. The members would be bound to obey the direction or otherwise entail disqualification. The provision thus results in the abdication of the functions of the duly elected representatives of the people of State in favour of an outside agency. The federal structure of the Constitution means and implies that the areas of operation of the States and the Union Government are defined under the Constitution and any law passed in transgression thereof by the Parliament or the State Legislature is liable to be struck down as *ultra vires* of the Constitution. It passes my comprehension as to in what manner the provisions of clause(b) of para 2 interfere with the federal structure of the Constitution. If the Bill moved by Bharatiya Janata Party member is adopted by the Legislature on the direction of the President of the ruling party, it can be said that the right of the members to vote according to their choice or wisdom was interfered with. But by no stretch of reasoning it can be said that the area of operation of the State Legislature was interfered with thereby. The contention raised, therefore, appears to be devoid of any merit".

(viii) "...The urgency and the need of the law to prevent defections was

accepted by all the political parties implicitly and without reservation as is evident from the fact that Bill was passed in both Houses of the Parliament without a single vote of dissent. Though there was some difference of opinion between the learned counsel for the parties as to the true status of a member of Parliament, *i.e.* whether he was a delegate of his political party or representative of the constituents, but even if it is accepted, as advocated by Mr. Shanti Bhushan that a member is representative of the constituents it would necessarily mean that the members of the House truly represent the will of the people and in that sense Fifty-second Amendment is deemed to have been enacted with unanimous will of whole of the nation. How then such a measure can be said to have the effect of eroding parliamentary democracy".

(ix) "My learned brother Tewatia, J. in his laborious and elucidating judgment has opined that provisions of para 2 (b) as framed, would be destructive of the democratic set up inasmuch as a member of the House is denied free right of speech and vote and has therefore, suggested the reading down of this provision to save it from the vice of unconstitutionality. For this opinion, he has relied on various considerations, first of them being the intent and purpose of the Parliament in the enactment of the Fifty-second Amendment. To find out the intent and purpose of the Parliament, it would be profitable to refer to the report of the Committee on Defections, reproduced below, which led the Lok Sabha to pass unanimously a resolution to set up a High Level Committee to consider the problem of defections :—

'Following the Fourth General Election, in the short period between March 1967 and February 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and the Fourth General Election, at least 438 defections occurred in these 12 months alone. Among Independents, 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Councils of Ministers which they help to bring into being by

defections. The other disturbing features of this phenomenon were; multiple acts of defections by the same person or set of persons or (Haryana affording a conspicuous example); few resignations of the membership of the legislature or explanations by individual defectors; indifference on the part of defectors to political proprieties; constituency preference or public opinion; and the belief held by the people and expressed in the Press that corruption and bribery were behind some of these defections'.

The purpose in enacting the Fifty-second Amendment, therefore, was not only to stabilise the legally elected Governments and to prevent the political immorality and corruption, but also to make them effective. If the provision is read down, as suggested, the main purpose of the amendment would be defeated. The making of the Government formed by the majority party would serve no purpose if it is not able to work effectively and carry out the party's policies on social and economic issues for which they are supposed to have been voted to power by the electorate. The provision shall also fail to prevent the political immorality and corruption because corruption is not confined only to the lure of ministerial berths or some other public offices, but can also take place for other considerations. What would be the use of a member remaining in the party if by joining hands in voting with the opposition he gets a prestigious measure on the avowed economic policy of the party defeated on accepting considerations other than the ministerial berth or public office".

(x) "Apart from the provisions of the Constitution, the Lok Sabha and the Ministry, in carrying out their functions, have to observe a large number of unwritten conventions. There is no provision in the Constitution which requires the President to appoint a leader of the majority party as Prime Minister, or the one requiring the cabinet of the majority party to resign if a money Bill sponsored by it is defeated. These matters obviously are guided by well-known conventions. Similarly, it is a well-established convention that if any important bill on policy matter is defeated, the cabinet usually resigns. As noticed by Cecil S. Emden in his book "*The People and the Constitution*", a convention has grown up, though it is not altogether of a rigid character, for members to retire or to seek re-election, if they change their party allegiance or their view regarding some vital political issue. Even in

the eighteenth century, conscientious scruples occasionally led members to resign their seats on altering their political tenets. So, by the proposed amendment, whatever was expected to be achieved by convention, is sought to be enforced by letter of law when conventions failed to achieve the desired results and the menace of defections grew to such enormous proportions as to threaten the very existence of democratic set-up."

(xi) "Apart from relying on the intent and purpose of the Fifty-second Amendment, two more reasons were advanced for reading down the provisions of clause (b) of para 2; one that if the member is only to endorse the decision taken outside the House by a political party, he would be rendered simply a rubber stamp having no volition of his own on the floor of the House and, second, that the direction issued by the political party would be violative of the right of free speech of the member guaranteed under article 105 of the Constitution . . . before a Bill is moved by the party, it is expected to have been discussed in the party forum where the members of the House also get full chance to put up their view point. Once the party has taken a decision, the member is expected to follow the party line in the House and support the Bill. If still he is unable to reconcile, he can give up the seat to which he got elected on the party ticket and seek re-election. Instead, if the course suggested by brother Tewatia, J. is adopted, it would lead to chaos and result in the destruction of the democratic set-up rather than strengthening it".

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

(xiii) "The principle of reading down a statute to save its constitutionality cannot reasonably be invoked in the present case. When can the principle of reading down be invoked, was explained in the majority judgment in *Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789* thus :

'The principle of reading down the provisions of a law for the purpose of saving it from a constitutional challenge is well known. But we find it impossible to accept the contention of the learned counsel in this behalf because, to do so will involve a gross distortion of the principle of reading down, depriving that doctrine of its only or true rationale when words of width are used inadvertently. The device of reading down is not to be resorted to in order to save the susceptibilities of the law makers, nor indeed to imagine a law of one's liking to have been passed. One must at least take the Parliament at its word when, especially, it undertakes a constitutional amendment.'

So, the principle can be invoked only when the words of width are used by the legislature inadvertently. In the present case, as discussed in detail above, it cannot be said by any stretch of reasoning that the Parliament had inadvertently used the words "any direction by the political party" in para 2(b). In fact, the provisions of para 2(a) by itself would not have been sufficient to effectively deal with the menace of defection and the provisions of para 2(b), which contain an independent clause, were very essential to achieve the purpose of the Amendment Act. The observations of Bhagwati. J. (as he then was) from the same case, relied upon by Tewatia.J. have to be understood in the context they were made. The question being discussed was the extent of the finality attached to the satisfaction of the President as to the existence of the grave emergency under article 352(1) and it was ruled that the provisions of clause 5(a) of article 352 would not override the power of judicial review of the High Courts and the Supreme Court; and if there was an allegation that the exercise of power by the President was colourable inasmuch as either there was no satisfaction recorded or the satisfaction recorded was absurd or perverse or *malafide* or based on a wholly extraneous and irrelevant ground, it would be no satisfaction at all and liable to be challenged before a Court. Obviously the principle or reading down as explained by the majority judgment, was neither invoked nor applied. Instead, what was ruled was that the said provision would not override the power of judicial review of the Courts which is one of the basic features of the Constitution."

(xiv) "Consequently, with utmost respect to the views of my learned brother Tewatia, J, I regret my inability to subscribe to the view that the provisions of para 2(b) would be destructive of the democratic set-up,

the basic feature of our Constitution, unless read down, as suggested. The contentions raised by the learned counsel for the petitioners are accordingly overruled and the constitutional validity of the impugned amendment upheld".

(xv) "Apart from the constitutionality of the Fifty-second Amendment, the notice and the order were sought to be quashed by the learned counsel for the petitioners on the ground that a valid order had already been passed by the Speaker recognising a split in the Shiromani Akali Dal and the petitioners as a separate group representing the faction which had arisen as a result of the said split and the present Speaker had no jurisdiction to review the said order of his predecessor and make a fresh decision. Mr. D.D. Thakur, the learned counsel for respondent 6, on the other hand, claimed that the said order was without jurisdiction and, as such, being *void ab initio* was rightly held to be not binding on any of the parties by the Speaker. The reasons advanced for this claim were that no question having arisen whether any member of the House has become subject to disqualification, reference to the Speaker in this regard was premature and incompetent; and that no notice having been issued to the leader of the original political party and the leader of the legislature party, respondent 7, the order was passed in violation of the principles of natural justice".

(xvi) "Mr. Shanti Bhushan, the learned counsel for the petitioners, refuting the claim of respondent 6, argued that whenever any member of the House makes a claim that he and some other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third members of such legislature party and that the said faction be recognised as his original political party, he has no other remedy except to approach the Speaker to pass a necessary order in this regard and make necessary changes in the registers or the records maintained by him as envisaged by clause (1)(a) of para 8. If this course is not adopted, a queer and paradoxical situation would arise inasmuch as in any session of the legislature thereafter, the splinter group would not know to which political party they belong or whose whip they are to obey. The splinter group, therefore, is not to wait till

their claim is challenged by someone and a question would be deemed to have arisen the moment a claim as envisaged by para 3 is made. As regards the making of a reference to the Speaker, he argued that anybody interested in the matter can approach the Speaker and reliance for this contention was placed on a decision of the Supreme Court in *Brundaban Nayak v. Election Commission of India, AIR 1965 SC 1892.* As regards the violation of the principles of natural justice, he contended that on the phraseology used in para 3, the Speaker is not competent to make any enquiry or record a reasoned order. The words used in the said para are "whenever a claim is made", which means that as soon as a claim is made, the Speaker is to accept the same and make necessary changes in the records. The question of issuing a notice to the leader of the original political party or the legislature party, therefore, would not arise. He, however, does not dispute that the Speaker would be entitled to make a numerical verification of the claim and reject the same if not satisfied in that regard".

(xvii) "For taking a decision on the conflicted claims, it is necessary to analyse the true intend and scope of the relevant provisions of the Tenth Schedule. Paragraph 2 provides that subject to the provisions of paras 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House if he has voluntarily given up his membership of such political party, or he votes or abstains from voting in such House contrary to any direction issued by the political party, to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, 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 within fifteen days from the date of such voting or abstention. Paragraph 3 provides that where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split and such group consists of not less than one-third of the members of such legislature party, he shall not be disqualified under the above noted provisions of sub-para (1) of para 2. Para 6 makes a provision for the decision as to the disqualification on the ground of defection and lays down that if any question arises as to whether a

member of a House has become subject to disqualification under the said Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final. The provisions of para 3 are obviously an exception to para 2 and are of the nature of a defence available to a member of the House against his disqualification, who has either voluntarily given up his membership of the political party to which he belongs or has voted or abstained from voting in the House contrary to the direction issued by his political party or by any other person authorised by it. Under para 6, the Speaker would have the jurisdiction in this matter only if any question arises as to whether a member of the House has become subject to disqualification under the said Schedule and the same has been referred to him for decision. The purpose of requirement of a reference obviously is that even when a question as to the disqualification of a member arises, the Speaker is debarred from taking *suo motu* cognizance and he would be seized of the matter only when the question is referred to him by any interested person. The Speaker has not been clothed with a *suo motu* power for the obvious reason that he is supposed to be a non-party man and has been entrusted with the jurisdiction to act judicially and decide the dispute between the conflicting groups. The other prerequisite for invoking the jurisdiction of the Speaker under para 6 is the existence of a question of disqualification of the some member. Such a question can arise only in one way, *viz.*, that any member is alleged to have incurred the disqualification enumerated in para 2(1) and some interested person approaches the Speaker for declaring that the said member is disqualified from being member of the House and the claim is refuted by the member concerned".

(xviii) "Now, let us examine the matter other way round as suggested by Mr. Shanti Bhushan. Suppose a split has taken place in the original party giving rise to a separate faction and more than one-third of the members have chosen to form a group representing such a faction; the question arises, is there any cause for them to approach the Speaker under para 6? The answer obviously would be in the negative. All that they need do would be to approach the Speaker, put their claim and request him to make necessary corrections in the records. When such a claim is made, by no stretch of reasoning it can be said that a question

has arisen as to whether they have become subject to disqualification under the Tenth Schedule. The Speaker, therefore, would have no jurisdiction to take congnizance of any dispute under para 6 nor to render any decision. Instead, he has to accept the claim as it is. This procedure has to be adopted because the entries in the records maintained under para 8 (1) (a) have to be corrected and seats to be allotted to the new group by virtue of the powers conferred on the Speaker under Rule 4 of Chapter II of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly). When the members claim to have formed a separate group, they would obviously be deemed to have voluntarily given up the membership of their political party within the meaning of clause (a) of para 2(1). If some interested party feels that thereby they have incurred the disqualification, it is he who has to approach the Speaker under para 6 and it would be then that a question can be said to have arisen as to whether a member of a House has become subject to disqualification and the Speaker would be seized of the matter. If no one challenges the claim of the members who have formed a new group, the provisions of para 6 would not come into operation nor the Speaker would be seized of any question relating to the disqualification of any member of the House. The action of the Speaker which he is required to take when a claim is made under para 3 would not, therefore, be an order under para 6 and would be only an executive action on his part in exercise of his powers under Rules 4 and 113 of the said Rules. Moreover, as already stated above the provisions of para 3 are an exception to para 2 and provide a defence to a member who is alleged to have incurred a disqualification. It is a thing of common knowledge that no one can approach a judicial or quasi judicial authority for adjudication upon his defence because unless someone alleges that he has committed the wrong, no cause of action would arise for pleading the defence or seeking an adjudication thereon."

(xix) "The argument of Mr. Shanti Bhushan that if the splinter group had no right to approach the Speaker under para 6 and has to wait till some interested party makes a reference to the Speaker, it would lead to a paradoxical situation as in that case the splinter group would not know to which political party they belong or whose whip they are to obey becomes untenable in view of the analysis of the relevant

provisions made above. The moment such a claim is made the splinter group would be deemed to have given up voluntarily the membership of their political party and the new faction which has come into being would be deemed to be their political party for the purposes of para 2(1). If their claim is not disputed by any interested person or by their original political party, no trouble would arise; but if somebody disputes their claim, he has to approach the Speaker under para 6, who would then be seized of the matter and pass a proper order because no other authority in case of dispute has the jurisdiction to declare that the splinter group has incurred the disqualification or not".

(xx) "The reliance on the decision of the Supreme Court in Brundaban Nayak's case (AIR 1965 SC 1892) (supra) for the proposition that the question would be deemed to have been referred to the Speaker on the filing of the application by the petitioners was also wholly misplaced. What happened in that case was that one, P. Biswal made an application to the Governor of Orissa that Brundaban Nayak subsequent to his election, had incurred a disqualification under article 191(1)(e) of the Constitution, which was forwarded to the Election Commission for its opinion. On a notice having been issued by the Election Commission, Brundaban Nayak challenged its competency to enquire into the matter and his counsel, without submitting to its jurisdiction, prayed for an adjournment. The request having been declined, he filed the petition under article 226 of the Constitution for quashing the enquiry pending before the Election Commission, which was dismissed *in limine*. He went to the Supreme Court against the order of the High Court. One of the contentions raised before the Supreme Court by Mr. Setalvad, his learned counsel, was that no question could be said to have arisen as to whether the appellant Brundaban Nayak had become subject to any of the disqualifications because such a question could be raised only on the floor of the Legislative Assembly and that too by a member of the Assembly and not by any ordinary citizen in the form of a complaint to the Governor. It was further argued that the expression that if any question arises it shall be referred for the decision of the Governor suggests that there was some referring authority which was to make a reference to the Governor for his decision. The contentions were repelled with the following observations:—

Para 12:

We are not impressed by these arguments. It is significant that the first clause of article 192(1) does not permit of any limitations such as Mr. Setalvad suggests. What the said clause requires is that a question should arise; how it arises, by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise; and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of article 192 (1) is plainly inconsistent with the words used in the said clause.

Para 13:

Then as to the argument based on the words "the question shall be referred for the decision of the Governor", these words do not import the assumption that any other authority has to receive the complaint and after a *prima facie* and initial investigation about the complaint, send it on or refer it to the Governor for his decision.

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If the intention was that the question must be raised first in the Legislative Assembly and after a *prima facie* examination by the Speaker it should be referred by him to the Governor, article 192(1) would have been worded in an entirely different manner. We do not think there is any justification for reading such serious limitations in article 192(1) merely by implication.

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The object of article 192 is plain. No person who has incurred any of the disqualifications specified by article 191(1), is entitled to continue to be a member of the Legislative Assembly of a State, and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by article 190(3)(a), there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in article 191(1)(a) should, therefore, vacate his seat. The very object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if the member forfeits that status by reason of subsequent disqualification, it is in the interest of the constituency which such member represents that the matter

should be brought to the notice of the Governor and decided by him in accordance with the provisions of article 192(2). Therefore, we must reject Mr. Setalvad's argument that a question has not arisen in the present proceedings as required by article 192(1)'.

(xxi) "It passes my comprehension as to how the above said observations support the contention of the learned counsel that a question would be deemed to have arisen within the meaning of para 6 on the making of the application by the petitioners to the Speaker. On the other hand, it can be reasonably implied from the said observations that the question arises only when an interested party makes a petition to the Speaker alleging that some member of the House has incurred a disqualification. Further, it becomes clear that not only the political party, its leader or a member of the Legislature, but any citizen can make an application to the Speaker raising a question under para 6, which is a complete answer also to the other argument raised by Mr. Shanti Bhushan that in the matter of disqualification, nobody except the member concerned would be the interested party."

(xxii) "I am, therefore, of the considered view that neither any question as envisaged by para 6 had arisen on the filing of the petition before the Speaker nor the order, can be said to be an order passed under para 6. The natural corollary to this conclusion would be that a question as to the disqualification of the petitioners had arisen and the Speaker was seized of the matter only when an application in that regard was made to him by respondent No.7".

(xxiii) "The principle of law is well established that an order passed in a given proceedings would not bind any person affected thereby who was neither party to those proceedings nor given an opportunity of being heard before passing the same. It was on the same principle that a five-Judge Bench of this Court in *State of Haryana v. Vinod Kumar, 1986 (1) 89 Pun LR 222 : (AIR 1986 Punj & Har 407)* held an order of the Collector Agrarian to be ineffective and *non est* against the persons who were affected thereby but were neither party to the proceedings nor afforded any opportunity of being heard. The Fifty-second Amendment has been enacted to prevent defections which necessarily means that it has been enacted primarily for the benefit of the political parties whose members constitute the House, though broadly speaking any citizen can invoke its provisions. The voluntary giving up

of the membership of any political party would affect such a party and so would any order passed under para 6. Consequently an order passed under para 6 affecting adversely any political party would be ineffective and *non est* against it if no notice is issued to it for opportunity of being heard afforded. By making a claim under para 3, the petitioners are deemed to have voluntarily given up the membership of the Shiromani Akali Dal on whose tickets they were elected. So, they were liable to be declared as disqualified from being members of the House. If their defence was to be accepted under para 3 and decision, as envisaged under para 6, to be made, the principles of natural justice would require a notice to be served on the President of the political party concerned. It has already been discussed above in detail that the Speaker would be a Tribunal while acting under para 6 and the proceedings before him of *quasi* judicial nature. Any order passed by him under that paragraph without issuing notice or affording any opportunity of hearing to the interested party, therefore, would be *non est* and ineffective against such a party. As before passing the order, neither the political party nor any other person interested in the matter was heard, it would bind none and in that sense it can be said to be an order *void ab initio*. On both the grounds, therefore, the Speaker was justified in ignoring the order. However, the order dated 4 July 1986 has to be quashed because the claim of Shri Amarinder Singh that he has been elected leader of the splinter group could be disposed of only after the question of disqualification of the members of that group has been settled and their defence under para 3 upheld".

(xxiv) "In view of my findings recorded above, it is not necessary at this stage to determine the exact import of the words 'split in his original political party' used in para 3 and the matter is left open for decision by the Speaker after taking into consideration all the relevant facts and circumstances. However, as brother Tewatia, J. has expressed his view in this regard, I must record my disagreement therewith in so far as it has been stated that the magnitude of the split, was not of any consequence".

(xxv) "In the result, these petitions are allowed to the extent that the order (of the Speaker) is quashed and the other prayers declined. In the circumstances of the case, the parties are left to bear their own costs."

The following is the minority judgment of the Court :

(i) "Mr. Shanti Bhushan, senior advocate of the Supreme Court of India, has addressed the Court on behalf of the petitioners; on behalf of the Union of India Mr. G. Ramaswamy, Additional Solicitor-General of India, and on behalf of the Speaker and other respondents Mr. D. D. Thakur, senior advocate of the Supreme Court of India, have argued the case".

(ii) "The submissions made by Shri Shanti Bhushan fall under two broad heads : —

(i) Constitutionality of the Constitution (Fifty-second Amendment) Act, 1985: and

(ii) Merits of the action of respondent No. 6 in passing the order and issuing the impugned show cause notice".

(iii) "Mr. Shanti Bhushan has canvassed that the Supreme Court in *Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461,* has ruled that the Parliament in exercise of constituent power in terms of article 368 of the Constitution cannot erode or destroy the basic structure or the framework of the Constitution. The seven Judges, who constituted the majority of the thirteen-Judge Bench, who decided Kesavananda Bharati's case (supra), without being exhaustive, identified some of the basic features of the Constitution, as forming part of the basic structure or framework of the Constitution. Out of them he listed : -

(i) Parliamentary Democracy;

(ii) Separation of powers between the Legislature, Executive and the Judiciary:

(iii) The Federal structure; and the

(iv) Judicial review by the courts,— as being relevant to the present case".

(iv) "According to Mr. Shanti Bhushan, the Parliament exceeded its constituent power by enacting para 2, clause (b) and paras 6 and 7 of the Tenth Schedule, added to the Constitution by section 6 of the Act (hereinafter referred to as the paragraphs). He maintains that whereas para 2 is destructive of three basic features of the Constitution, namely (1) Parliamentary democracy, (2) separation of powers between three wings of the State, namely Executive, Legislature and Judiciary, and

(3) the federal character of the Constitution; paras 6 and 7 eroded the power of judicial review, exercised by the High Courts and the Supreme Court of India."

(v) "Mr. Shanti Bhushan also contended that since paras 6 and 7 affected the jurisdiction of the High Court under article 226 and of the Supreme Court under article 136 of the Constitution of India, the Bill containing paras 6 and 7 had to be ratified in terms of proviso to sub-clause (2) of article 368 of the Constitution before it could have been presented to the President for his assent and since admittedly the Bill had not been ratified in terms of the said proviso, the entire Act is constitutionally invalid".

(vi) "The contention pertaining to the ratification of the Constitution (Fifty-second Amendment) Bill, 1985 (hereinafter referred to as 'the Bill') in terms of the proviso, aforementioned, deserves examination at the very outset, because if this contention prevails, then the Act may have to be declared constitutionally invalid on this score alone and consequently, it may not be necessary to examine the other provisions of the Act, in the light of the contention raised by Mr. Shanti Bhushan in regard to them already taken notice of above".

(vii) "As to whether the Bill was required to be ratified in terms of proviso, in question, it would first have to be seen as to whether paras 6 and 7 affected any change in articles 226 and 136 of the Constitution of India, as these articles form part of the group of provisions, which are enumerated by the proviso, in question, which provision for convenience sake can be called "the entrenched provision...".

(viii) "Perusal of para 6 would reveal that clause (I) thereof makes the decision of the adjudicating authority 'final'. Sub-clause (2) thereof makes the proceedings envisaged by sub-para (i) of para 6 and the adjudicating authority immune from the jurisdiction of any court in terms of articles 122 and 212 of the Constitution of India.

Article 122 of the Constitution provides that courts are not to interfere into the proceedings of Parliament on the ground of any alleged irregularity of 'procedure'. Clause (1) and (2) thereof provide that no Officer or member of Parliament, who is vested by or under the Constitution with the powers for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Article 212 of the Constitution similarly provides in regard to the proceedings of the Legislature of the State".

(ix) "Mr. Shanti Bhushan confined his challenge in the context of requirement of ratification to sub-para (1) of para 6 only and therefore, it has to be seen as to 'whether sub-para (1) of para 6, in any manner sought to effect any change in the entrenched provision of articles 226 and 136 of the Constitution of India?"

(x) "Mr. G. Ramaswamy has argued that the Fifty-second Amendment was not intended to effect any change in articles 226 and 136 of the Constitution of India, its main purpose being to amend articles 102 and 191 and add a new Schedule to the Constitution to give effect to those amendments and added that even in the event of it being held that paras 6 and 7 in some manner effected the ambit of articles 226 and 136 of the Constitution of India, the Bill in question, would not require to be ratified by the State Legislatures in terms of proviso to clause (2) of article 368 of the Constitution of India in view of the application of the doctrine of pith and substance the encroachment upon the jurisdiction of the High Court and the Supreme Court under articles 226 and 136 of the Constitution of India , respectively, being incidental and unavoidable and the purpose underlying the enactment of the Bill had to be achieved. Mr. Ramaswamy further argued that the procedure of ratification envisaged by proviso to clause (2) of article 368 of the Constitution was directory and not mandatory in character and, therefore, the Act cannot be held to be stillborn enactment on that score".

(xi) "Mr. D.D. Thakur, the learned counsel for respondent No. 6, adopted a somewhat different approach in regard to the scope and ambit of paras 6 and 7 and urged that neither para 6 nor para 7 in any manner affected the application of articles 226 and 136 of the Constitution of India. Mr. D.D. Thakur argued that power of the judicial review envisaged by articles 226 and 136 of the Constitution remains unaffected by paras 6 and 7, in that the decision of the Speaker remained subject to the writ jurisdiction of the High Court and the Special Leave jurisdiction of the Supreme Court".

(xii) "Let us first decide as to whether para 6 in any manner affected the jurisdiction of the High Court under article 226 and of the Supreme Court under article 136 of the Constitution of India.

Mr. G. Ramaswamy referred us to a Supreme Court decision in *Brundaban Nayak v. Election Commission of India, AIR 1965 SC 1892,* and drew our pointed attention to paras 13 and 14 thereof in support of his submission in relation to para 6 of the Tenth Schedule that the jurisdiction of courts including the High Court and the Supreme Court stood ousted, and that the order of the Speaker rendered in terms of para 6 of the Tenth Schedule could not be called in question in any manner either in the High Court or in the Supreme Court...".

(xiii) "He also argued that in its substantive import para 6 is almost in *pari materia* with article 192 of the Constitution. He laid stress on the fact that if the framers of the original Constitution thought it fit to make the decisions of the Governor immune from the judicial review by the High Court and the Supreme Court, then the Parliament by enacting para 6, a parallel provision and therein substituting the expression "Governor" for the word of "Speaker" or the "Chairman" must have intended the same result".

(xiv) "I find no merit in the contention advanced on behalf of the Additional Solicitor-General of India, Mr. G. Ramaswamy. In my view authority relied upon by Mr. Ramaswamy is of no avail. In my opinion, despite the use of the word "final" in sub-para (I) of para 6, the decision of the Speaker, or as the case may be, of the Chairman of the House remains subject to the writ jurisdiction of the High Court under article 226 and *inter alia* the Special Leave jurisdiction of the Supreme Court of India...".

(xv) "In view of the authoritative decisions of the Supreme Court and the English authorities of the Court of Appeal and the House of Lords, I have no hesitation in holding that the order passed by the Speaker under para 6 of Tenth Schedule remains subject to the judicial review of the High Court under article 226 of the Constitution. In other words para 6 in no manner affects the ambit of article 226 of the Constitution of India".

(xvi) "Mr. G. Ramaswamy has also contended that the decision of the authority under sub-para (I) of para 6 is not liable to review by the Supreme Court in exercise of its Special Leave jurisdiction under article 136 of the Constitution of India, because the Speaker or, as the case may be, the Chairman of the House, is not a Tribunal".

(xvii) "In my opinion, there is no merit in this contention. Sub-para (1) of

para 6 confers on the authority mentioned therein power to deprive by its decision a member of his very important right to continue to be the member of the House. The authority named in the said paragraph discharges the judicial function of the State by virtue of this provision. The constitutional Bench in Durga Shankar Mehta's case (supra) approvingly quoted the ratio of the Supreme Court decision in the *Bharat Bank Ltd. Delhi v. Employees of the Bharat Bank Ltd. Delhi, AIR 1950 SC 188* that the expression "tribunal" as used in article 136 includes within its ambit all adjudicating bodies, provided they are constituted by the State and also vested with the judicial, as distinguishable from purely administrative and executive functions".

(xviii) "Section 9 of the Code of Civil Procedure confers upon the civil courts the jurisdiction to try all suits of a civil nature excepting suits of which their congnizance is either expressly or impliedly barred. Explanation I to section 9 thereof indicates that a suit in which the right to property or to an office is contested is a suit of a civil nature".

(xix) "Membership of a House is an office, which the person successfully elected to it is entitled to hold. If illegally deprived of that office the member is entitled to challenge the order of the Civil Court by filing a civil suit. Articles 103 and 192 of the Constitution and paras 6 and 7 of the Tenth Schedule take away the jurisdiction of the Civil Court in this regard and entrust the said task to the President under article 103, to the Governor under article 192 and to the Speaker or, as the case may be, the Chairman of the House under para 6. It only means that in this regard the inherent judicial power of the State which was exercisable by a Civil Court has now been transferred to the authorities named in articles 103 and 192 of the Constitution and para 6. The power that such authority exercises is "judicial". This power has been conferred upon such authorities by the Constitution itself. Therefore, I have no hesitation to hold that the authority named in para 6 of the Tenth Schedule and article 192 of the Constitution performs "judicial function" whilst adjudicating upon the question as to whether the member had become subject to any disqualification and, therefore, they are the Tribunals for the purpose of article 136 of the Constitution of India and their decision is subject to review by the Supreme Court in exercise of its power under article 136 of the Constitution of India".

(xx) "In view of the above, I hold that para 6 in no manner detracts from the jurisdiction of the Supreme Court under article 136 of the Constitution of India despite use of the word "final' in sub-para (1) of para 6 of the Tenth Schedule".

(xxi) "Coming now to the analysis of para 7, it may be observed that Mr. G. Ramaswamy forcefully contended that para 7 was enacted to make the intention of the Legislature clear that it wanted to make the decision of the authority, mentioned in para 6 totally immune from any interference by any court, including the High Court and the Supreme Court".

(xxii) "To appreciate the above contention of the Additional Solicitor-General, a look at para 7 is necessary. It is in the following terms :

Bar of jurisdiction of Courts. – Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

Paragraph 7, according to Mr. G. Ramaswamy, has been enacted partly to make express what was implied in para 6 and partly out of abundant caution to take care of what may have been left uncovered by para 6, by the use of *'non obstante'* clause "notwithstanding anything" in this paragraph. Mr. G. Ramaswamy contends that Parliament has, by enacting para 7, sought to take out from the purview of all Courts all matters connected with the disqualification of a member of a House under Tenth Schedule. He contended that use of the expression "Notwithstanding anything in this Constitution" in para 7, before the word "no Court" clearly points to the jurisdiction of the High Court and the Supreme Court as the Constitution creates only those two Courts and confers jurisdiction under article 226 and article 227 upon the High Court and *inter alia* under article 32 and article 136 of the Constitution upon the Supreme Court, — that means, — maintained Mr. G. Ramaswamy, that enacting para 7, the Parliament had expressly intended to oust the review jurisdiction of the High Court and the Supreme Court in regard to the decision of the authority mentioned in para 6, clause 1 of the Tenth Schedule.

Mr. D.D. Thakur, on the other hand, submitted that by enacting para 7, the Parliament merely sought to exclude determinative jurisdiction of the Courts in regard to matters connected with the disqualification of a member and not the 'review jurisdiction' of the High Court and the Supreme Court in regard to the decision of the Speaker or, as the case may be, of the Chairman. Mr. D.D. Thakur

argued that the expression : "jurisdiction" occurring in para 7 had acquired fixed connotation and has become a term of art and that as a term of art, it means that the Court is entitled to enter on an enquiry into the question as to whether a member has incurred disqualification of the kind. He maintained that the Parliament, therefore, must have used the expression "jurisdiction", in that narrow sense. He also canvassed that the expression : 'matter' occurring in para 7 in relation to the disqualification of a member would not compass within its fold the decision of the Speaker or, as the case may be, of the Chairman, rendered under para 6(1) of the Tenth Schedule".

(xxiii) "In my opinion, I find no merit in the contention advanced on behalf of Mr. Thakur. The determinative jurisdiction of the Courts by necessary implication had been excluded by sub-para (1) of para 6, which envisaged the Speaker or, as the case may be, the Chairman of the House to inquire into the question as to 'whether a member had incurred the given disqualification and made his decision 'final'. Because by doing so, the Parliament clearly intended to oust the determinative jurisdiction of the Court. The Parliament by enacting para 7, in my opinion, had not only intended to make express what was implied in para 6, but also intended to oust the jurisdiction of the High Court and the Supreme Court in regard to the decision of the Speaker or, as the case may be, of the Chairman of the House. By using the expression "any jurisdiction in para 7", the Parliament, it appears to me, had made its intention in this regard crystal clear. If the Parliament had intended merely to oust the determinative jurisdiction of the Courts then it would not have used the expression "any jurisdiction" which means "any kind of jurisdiction" and when this is considered in the context of the *non obstante* clause "notwithstanding anything in this Constitution", it clearly meant to include the jurisdiction of the High Court and the Supreme Court. The High Court and the Supreme Court do not exercise any determinative jurisdiction under articles 226 and 136 of the Constitution. The Parliament by enacting para 7, clearly intended to take away the review jurisdiction of the High Court and the Supreme Court under article 226 and article 136 of the Constitution of India in all matters. connected with the disqualification of a member of a House under the Tenth Schedule. The expression 'matter', in my opinion, would certainly include the

decision of the Speaker or, as the case may be, of the Chairman, rendered in terms of para 6(1), because the decision of the kind is certainly connected with the disqualification of the kind of a member of the House".

(xxiv) "Since para 7 seeks to oust the jurisdiction of the High Court and the Supreme Court under article 226 and article 136 of the Constitution, respectively, it necessarily affects changes in these two articles.... The question that, however, requires examination is as to whether the Bill as such or para 7 alone was required to be ratified in terms of proviso to clause (2) of article 368 of the Constitution".

(xxv) "Before doing so, we may at this stage, consider already referred to, two other submissions of the Additional Solicitor-General of India, Mr. G. Ramaswamy. They are;—

(i) that the procedure envisaged by said proviso is directory in character and not mandatory;

(ii) that in 'pith and substance' the Bill was meant to prescribe an additional disqualification of a member of the House by effecting amendment in article 191 and article 102 and consequential changes in article 192 and article 101 and any encroachment upon article 226 and article 136 of the Constitution is merely incidental and unavoidable".

(xxvi) "Mr. G. Ramaswamy, however, cited the following decisions in support of his contention that the procedure envisaged by the proviso is directory in character :—

(i) *Jan Mohammad Noor Mohamad Baqban v. State of Gujarat, AIR 1966 SC385, at 394* (para 18); (ii) *Kali Pada Chowdhury v. Union of India AIR 1963 SC134, at p.138* (paras 11& 12) (iii) *Hoechst Pharmaceuticals Ltd. v. State of Bihar, AIR 1983 SC 1019* (para 89); (iv) *Jawaharmal v. State of Rajasthan, AIR 1966 SC 764* at pp. 769 and 771 (para 16); (v) *Mangalore Ganesh Beedi Works v. State of Mysore, AIR 1963 SC 589* at p. 590; and (vi) *Purushothaman Nambudiri v. State of Kerala, AIR 1962 SC 694* at pp 698 to 701.

Ratio of none of these cases is attracted to the facts of the present case, even remotely and consequently. I do not propose to deal with them in any detail particularly in view of the binding authority of

Kesavananda Bharati's case".

(xxvii) "Now a word about the 'theory of pith and substance' floated by the counsel for the respondents in an effort to save from being declared invalid the provisions of paras 6 and 7 for want of ratification in terms of proviso to clause (2) of article 368 of the Constitution of India".

(xxviii) "Support for the above submission was sought from two decisions in *Shankari Prasad Singh Deo v. Union of India, AIR 1951 SC 458* and *Sajjan Singh V. State of Rajasthan, AIR 1965 SC 845".*

(xxix) " Paragraph 7 of Tenth Schedule of the Fifty-second Amendment Act, in my view directly affects the jurisdiction of the High Court and the Supreme Court under article 226 and article 136 of the Constitution of India, respectively, in that— when the Speaker by his order deprives a member of his membership of the House, the member is deprived from challenging the correctness and legality of that order in the High Court under article 226 and the Supreme Court under article 136 of the Constitution of India...".

(xxx) "The theory of pith and substance merely implied that the Parliament in exercise of its constituent power just could not have amended the Constitution by way of adding another item of disqualification in article 102 and article 191 of the Constitution without affecting the jurisdiction of the High Court and the Supreme Court under article 226 and article 136 of the Constitution and that the object of amendment was to prescribe a disqualification of the member for a given reason on account of some action and omission on his part, rather than to curtail the jurisdiction of the High Court and the Supreme Court under article 226 and article 136 of the Constitution respectively, as such. Such is not the case here. Parliament without detracting from the jurisdiction of High Court and the Supreme Court under article 226 and article 136 of the Constitution respectively could effect the amendment of the Constitution by adding the additional disqualification in question".

(xxxi) "For the reason, aforementioned, I hold that the doctrine of pith and substance is not attracted to the facts of the present case".

(xxxii) "Now the next question that requires to be examined is that where the Bill effecting amendment to the Constitution is composite in character, in that it partly amends or affects such provisions of the Constitution as

would require ratification by the State Legislatures and partly such provisions of the Constitution as require no such ratification by the State Legislatures, then 'whether such a Bill, as such, is to be ratified by the State Legislatures, or only the provision, which amends those provisions of the Constitution which are referred to in proviso to clause (2) of article 368 of the Constitution of India?"

(xxxiii) "In my opinion only such amending provision, as amends the provision of any of the articles, referred to by the proviso to clause (2) of article 368 of the Constitution that is required to be ratified by the State Legislatures and not the entire Bill as such, although the entire Bill may be transmitted to the State Legislatures to enable them to understand the context in which a provision that required ratification had come to be enacted by the Parliament."

(xxxiv) "In my view of the above, para 7 of the Tenth Schedule having not been ratified by the Legislatures of the State in terms of proviso to clause (2) of article 368 of the Constitution, the same is held to be invalid and is struck off as such from the Tenth Schedule".

(xxxv) "The next question that falls for consideration is as to what is the effect of invalidity of para 7 on the remaining provisions of Fifty-second Amendment Act."

(xxxvi) "Mr. Shanti Bhushan, the learned counsel for the petitioners, argued that para 7 is an integral part of Fifty-second Constitution Amendment, in that the Parliament had intended that if the menace of defection by the members of the State Legislatures or of the two Houses of the Parliament was to be checked, then the orders of the Speaker passed in terms of para 6 disqualifying such members in terms of para 2 should be made immune from any challenge in the Courts including the High Courts and the Supreme Court...".

(xxxvii) "What is to be seen is as to whether in the absence of para 7, the Constitution (Fifty-second Amendment) Act, 1985 remains functional or not.

(xxxviii) "In my opinion, para 7 is clearly severable and its non-existence would not in any manner affect the working of the enactment, nor would it defeat the basic underlying purpose of the enactment, in question."

(xxxix) "Now the stage is set to consider the primary contention of Mr.

Shanti Bhushan that para 2 of the Tenth Schedule is *ultra vires* the constituent power of the Parliament as the said paragraph was destructive of the three basic features of the Constitution."

(xl) "So far as the question of para 2 being destructive of two basic features of the Constitution, namely—federal character and the separation of powers between Legislature, Executive and Judiciary, is concerned, it may be observed that this contention is noted only to be rejected. Paragraph 2 even distantly makes no encroachment on the aforesaid allegedly two basic features of the Constitution."

(xli) "I have now to examine as to — whether 'democracy' or 'Parliamentary democracy' is a basic feature of the Constitution and forms part of the basic structure of the Constitution and whether para 2 is destructive thereof."

(xlii) "In Kesavananda Bharati's case (supra) the Supreme Court has ruled that the basic structure or basic framework of the Constitution cannot be eroded or destroyed by Parliament in exercise of constituent power under article 368 of the Constitution of India."

(xliii) "The question that has to be answered each time by the Court, whenever an amendment of the Constitution is challenged as being *ultra vires* the constituent power of Parliament, is as to whether the given amendment erodes or destroys the basic structure of the Constitution? Before one can answer that question — one must know as to what constitutes the basic structure or basic framework of the Constitution."

(xliv) "The starting point of inquiry would be — as to "who has given the Constitution and to whom?"

The quest for a civilized existence over a period led the human beings by trial and error method to the discovery that real freedom in contradistinction to absolute freedom is untenable without orderly and settled collective existence in shaping and maintaining of which they as free individuals would have a say. Orderly collective existence is achievable only when in every matter there is only one decision and not as many decisions as are the individuals, who have voice in the matter. That is possible only if decision is taken unanimously or by a majority or by drawing of lots and then it is respected as if it was taken unanimously. Where individuals who have a voice in the matter are so

large and there are so many matters that call for a decision as to make it utterly impossible to take all the decisions or to take such decisions in time, then out of necessity there would occur a search for the alternative. The alternative suggests itself. The free people would decide to select such number of them as their representatives as would be able conveniently to meet as often as the requirement of decision-making dictates. Free individuals, it would necessarily follow, would like to select such representatives according to their free will and choice and again either unanimously or by majority. The above unmistakably suggests following basic formulations or assumptions :—

(i) *inter se* equality among such individuals or citizens;

(ii) right to life and liberty;

(iii) decision-making either unanimously or by majority or by drawing of lots in case of a tie.

(iv) accountability of the representatives to the people, who had elected them;

(v) the free people (either directly or through their representatives) deciding to create a body of fundamental laws for regulating their affairs — political, economic and social — from which it necessarily follows that they meant to be governed by laws and not by any one of them individually or by a group of them. The individuals could hold differing opinion as to what is the law, which they have to follow and bow to in a given situation. If their differences are not resolved, then it can lead to unsettled conditions and break-up of the fabric of their society that they had constructed. The law-abiding disputants, *inter alia* when they are unable to settle the disputes mutually, would naturally elect to entrust the resolving of their disputes and differences to someone amongst themselves, who would inspire confidence in regard to his objectivity and fair-mindedness as also competence".

(xlv) "For the purpose of examining as to whether paragraph 2 is destructive of any of the basic features of the Constitution, our aforesaid theoretical inquiry that free people could have agreed to live to be part of a collective orderly and settled existence only on the basis of there being mutual agreement on the aforesaid *inter alia* basic postulates need go no further".

(xlvi) "Now, it is to be seen as to what extent the free people of this country had recognised the aforesaid basic postulates or assumptions to be so by giving them a concrete shape in the Constitution, which, they gave to themselves on the 26th of January, 1950 :

Preamble to the Constitution, which admittedly had been voted upon by the Constituent Assembly like any other provision of the Constitution in express terms records :

> WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :
>
> JUSTICE, social, economic and political;
>
> LIBERTY of thought, expression, belief, faith and worship;
>
> EQUALITY of status and of opportunity; and to promote among them all
>
> FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;
>
> IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

(xlvii) "The implication of the above statement is clear and unambiguous that the people, who gave the said Constitution to themselves were free and sovereign people. They also spelled out in all solemnity the basic objectives, which by enacting the Constitution, they intended to achieve and the kind of India they wanted to constitute and live in. Some of the theoretical postulates that I had earlier spelled out, namely— Liberty, Equality etcetera, find a mention in the Preamble".

(xlviii) " Right to life and liberty received recognition in article 21 of the Constitution. Right to equality is recognised in articles 14, 15, 16 and 17 of the Constitution of India".

(xlix) "Recognition of the fact that the people would act through their representatives is envisaged by articles 79, 80, 81, 168, 169, 170 and 171; that their representatives shall take such decisions on their behalf by a majority is recognised in article 100 and article 189 of the Constitution".

(l) "Article 99 and article 188 envisage that members of the two Houses of Parliament and the members of the Legislative Assembly or the

Legislative Council of the State shall before taking seat shall make and subscribe before the President or, as the case may be, the Governor, or some person appointed in that behalf by them, an oath or affirmation according to the form set out for the purpose in the Third Schedule..."

(1i) "From the above, it is clear that the basic theoretical formulation that free people would decide to live in an organised orderly settled collective existence only if the decisions concerning them and their welfare and the affairs of the organization with which they have come to connect themselves and have become integral part thereof, would be either taken by them freely or by their freely elected representatives, enjoying similar freedom of choice in the matter, have found recognition in the Constitution, which have provided that every eligible person of 21 years of age would be entitled to enroll as a voter and would participate in electing a member to represent him to the Legislative Assembly or Legislative Council of the State and to the Parliament; that such elected or nominated member of the House shall take oath before entering upon his seat *inter alia* to abide and uphold the Constitution of India and faithfully carry out his duty as a member."

(lii) "His primary duty, as I understand it, is to take part in the proceedings of the House, express his opinion freely on matters that come up for consideration in the House and to cast his vote on merits of a given case on the dictates of his conscience with a view to advance the public interest as opposed to his personal and self interest."

(liii) In my view the important role that the political parties play in the governance of the country and in the election of the members of the Parliament and of the Legislative Assembly of the States is all too evident to require to be buttressed by a reference to the views of celebrated authors in this regard. One is, however, sceptical about accepting the extreme claim made on behalf of the political party that a member must always and in all respects feel bound to act in accordance with the dictates of the political party in the discharge of his function and duties in the House, as a member of the House."

(liv) "The extreme stand of Mr. Shanti Bhushan too does not commend to me notwithstanding the forceful support, which he receives for his above submission from Mr. N.A. Palkhivala, the noted jurist, who in

his Book *'Our Constitution Defaced and Defiled'* (1974 Ed.) canvassed:—

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

(lv) "If it would amount to running away from reality, for Mr. Shanti Bhushan, the learned counsel for the petitioners, to advocate that the existence of the political parties and the role played by them in the governance of the country has not been recognized by the Constitution and, therefore, elected representatives in the exercise of their functions, as such cannot at all and in any manner whatsoever be controlled or restrained by the political party of which they are members, it would also amount to total emasculation of elected representatives in the exercise of their functions, as such, if on the other hand, the extreme proposition propounded by the counsel for the respondents is to hold sway, for it would result in making of the elected representative a mere rubber-stamp in the hands of the political parties and that in my view would be totally destructive of his representative character and thus of democracy which is one of the basic features of the Constitution and forms part of the basic structure of the Constitution.

(lvi) "There can be no gain-saying the fact that the existence of the political parties and their role in elections and in the governance of the country is a reality, and the Constitution of India is not that totally innocent of their existence as advocated by Mr. Shanti Bhushan..."

(lvii) "If the existence of the political party and the role that it plays in the governance of the country is a reality, that does not mean that the elected representative of the people is to become a mere tool in the hands of a political party. Free and fair voting is the basic and essential attribute of democracy and thus a component part of basic structure of the Constitution, that the fact that founding fathers of the Constitution were aware of this aspect of the democracy is evident from the fact that they entrusted the conduct of the elections in the

hands of an authority, known as 'the Chief Election Commissioner' whose authority and independence in its functioning they made every effort to secure from outside interference, as is evident from the provisions of clauses (5) and (6) of article 324 of the Constitution..."

(lviii) "Parliament enacted the Representation of the People Act, 1951 (for short 'the 1951 Act') in exercise of power under article 327 of the Constitution of India. The provisions of section 123 of the 1951 Act, enumerates corrupt practice in elections on the proof of which, on the part of a candidate envisages declaration of his election void. Chapter III of part VII of the 1951 Act provides list of the electoral offences and also prescribes penalty and punishments therefor.

If the above mentioned provisions of clauses (5) and (6) of article 324 of the Constitution and the above quoted provisions of 1951 Act were meant to effectively ensure free and fair elections of the representative, provisions of article 105 and article 194 were enacted by the authors of the Constitution to ensure his free functioning in the House to which he stands elected."

(lix) "Ensuring of 'absolute freedom of action and expression to an individual or his representative whilst living in an organised society is not only an impossibility, but is a mirage and an illusion. The approach can be no different in regard to the functioning of an elected representative in the House. The role of the umbilical cord that binds him with the political party of which he is a member and the role that the political party has come to play in the governance of the country cannot be ignored altogether. Therefore, one has to strike a balance. It is impossible to achieve the successful democratic governance of a country even of a small country, what to talk of the country of the size of India, without the active involvement of the political parties. If a representative elected not only on the ticket but also on the strength of the political ideology of the party and the man and material resources thereof, is to renounce allegiance to his party, then not only the political parties, as a sequence thereof, would become irrelevant, but it would also become impossible to ensure stability of the government and in consequence freedom of the country, more so in the case of a country like India, whose part history holds out ample proof of the fact that it is the instability of its government, in other words a weak

government that had been a standing invitation to invaders and the cause of the ultimate subjugation of this country."

(lx) "That the defection from the political parties by members elected to the House on their tickets, could destabilize the Government and that such defections by M.L.As. and M.Ps. which was mostly for selfish reasons, has assumed grave proportions, is not a figment of imagination. As per Report of the Committee on Defections (Part I), which was set up by the Government of India, in pursuance of a resolution, passed by the Lok Sabha on 8 December 1967 — whereas only 542 members defected between the First and the Fourth General Elections, as many as 438 defected in twelve months between 1967 and 1968. As many as 116 members out of 210 defecting legislators were made Ministers. As a result of defections, a number of governments fell and chaotic and unstable conditions prevailed in number of such States. It was in the wake of such conditions caused by defections of large number of members mostly for self-aggrandizement that the Parliament passed the following resolution on 8 December 1967, contained in the report of the Committee — 'Committee on Defections Part - I'

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

(lxi) "If the result of ensuring absolute freedom of the kind to the elected representative is also in the ultimate result, to amount to the ensuring of slavery of the country, then such absolute freedom to the elected representative could never have been the prized objective of the framers of the Constitution. At the same time, they could not have intended the snuffing out of the very spirit of democratic functioning by authorising such an amendment of the Constitution as would result in totally stifling the voice of the elected representative in the House and its translation into action by voting in the House in accordance with the dictates of his conscience. If such had not been the intention of the framers of the Constitution, then the ensuring of freedom of speech in the House by enacting article 105 of the Constitution would

hardly make any sense. For a member of the House would not only look foolish, but become an utter object of contempt and malicious talk about his integrity if after having expressed views against a proposal before the House he was to vote in favour of the proposal not because he had changed his views in the meantime but because somebody had pressurised and dictated him to do so."

(lxii) "Any amendment of the Constitution that was to lead to such a result would be *ultra vires* the basic structure of the Constitution as it would be destructive of democracy/parliamentary democracy.

It is to be seen whether the Parliament by enacting paragraph 2 intended such absolute curbs at the instance of a political party on its members..."

(lxiii) "It is also a settled principle of interpretation that literal or grammatical meaning of the words and expressions used, particularly in the context of the Constitutional Law, is to be avoided, where the literal meaning of the words used does not adequately convey the true purpose and intent of the legislature then the provision in question could be made worthy of conveying that intent even if a word or two here or there is subtracted or added or even whole sentence is added or subtracted therefrom..."

(lxiv) "It is also a well recognized principle of construction that while construing a statute, the courts have to so read the provisions of the Act as to steer it clear of the vice of unconstitutionality..."

(lxv) "The basic purpose of enacting the Constitution Fifty-second Amendment Act was to make it difficult for the member of the House to change sides. For such act of theirs can destabilize the democratic system. The defection for instance from opposition can pave the way for a one party rule and eventually to one-man rule and the defection from the ruling party can lead to the fall of the party Government. Frequent defections to and fro can make it difficult for any party Government to function effectively. Such instability can grievously weaken the country. If the members were free to change sides that freely under the cover of their democratic right, then it may lead to the extinction of democracy itself. Mr. Shanti Bhushan, it may be recorded, therefore, readily and rightly conceded that paragraph 2(1)(a) was not destructive of democracy/parliamentary democracy and thus of the basic structure of the Constitution and that the said provision is

constitutionally valid."

(lxvi) "Now the next question that in the context of paragraph 2 falls for consideration is as to whether provision of paragraph 2(1) (b) in its basic import was intended to serve the same purpose as was sought to be achieved by paragraph 2(1) (a). In other words whether the Parliament by enacting paragraph 2(1) (b) had intended to curb such voting or abstention from voting on the part of the members of the House, contrary to the direction issued by the political party, one belonged to, as would lead to such sinister results as had been comprehended by me while discussing the defection in the context of paragraph 2(1)(a)."

(lxvii) "Literal reading of the expression "any direction" occurring in paragraph 2(1) (b) would mean each and every direction issued by the political party in regard to the voting in the House by its members. That such could not have been the intention would be presently shown."

(lxviii) "From the respondent side, at best it can be urged that the electors had elected the candidates of a given party as they had faith in the social, political and economic ideology of the party, which had sponsored them and by defecting, the member would be betraying the trust of his political party and the electorate, because as a result of his defection the party would not be able to implement its policies."

(lxix) "But, it may be observed that it is not merely legislative measures that come up before the House for consideration and which require members to give their opinion by casting their votes. The House, at times, has to consider the motion for impeaching high constitutional functionaries like President of India, Judges of the Supreme Court and High Courts, Comptroller and Auditor–General of India and the Chief Election Commissioner of India, or the motion for punishing a person for contempt of the House. The decision of the House to impeach or punish arrived at as a result of such motion being passed by the House with the given majority of votes, involves exercise of judicial functions of considerable magnitude and importance. In this, no social, economic or political ideology of a given party is involved. What is involved is the consideration of a pure merit of a given case of impeachment or contempt of the House. In a case like this, legitimately

no whip can be and ought to be issued to its members. Similarly, the Presiding Officer of the House is supposed to act in a non-partisan manner. When a Speaker or Deputy Speaker is to be elected by the members, the political party, in my opinion, should not issue any direction to its members to vote one way or the other, if a semblance of non-partisan character of the office of Speaker and Deputy Speaker is to be maintained."

(lxx) "If the expression : 'any direction' is to be construed in literal sense then the political parties would be entitled to give direction to their members to vote in one way or the other on a motion of contempt, and impeachment as also regarding election of the Speaker and the Deputy Speaker, which in my view, was not the purpose and object of the Parliament in enacting the Fifty-second Constitution Amendment. Clause (b) of paragraph 2, in my opinion, could not be construed in isolation. It must be interpreted in the context of clause (a)."

(lxxi) "Whilst enacting a statute or a given provision thereof, the Legislature had a purpose or an objective in view. The courts have to derive the purpose and the intent that animated the Legislature in enacting the given statute or its given provision. This intent is, no doubt, to be gathered from within the four corners of the statute. Once that is done and the court becomes aware as to the intent of the Legislature, then it has to interpret the relevant provision of the statute in the light of the said awareness. I have already hinted at the basic purpose of enacting Fifty-second Constitution Amendment. The said intention of the Legislature too warrants against the literal construction of the words : 'any direction'....."

(lxxii) "The expression "defection" occurring in the heading of paragraph 2 also points to the desirability of giving a narrow meaning to the words "any direction". The expression "defection" in the Concise Oxford Dictionary (seventh Edition) gives the following meaning:—
"falling away from allegiance to leader, party, religion, or duty; desertion, especially to another country etc."

(lxxiii) "If the expression : 'any direction' is to be literally construed then it would make the people's representative a wholly political party's representative, which decidedly he is not. The member would virtually lose his identity and would become a rubber stamp in the hands of his political party. Such interpretation of this provision would cost it, its

constitutionality, for in that sense it would become destructive of democracy/parliamentary democracy, which is the basic feature of the Constitution. Where giving of narrow meaning and reading down of the provision can save it from the vice of unconstitutionality the Court should read it down particularly when it brings the provision in line with the avowed legislative intent. ....."

(lxxiv) "When clause (b) of sub-paragraph (1) of paragraph 2 of Tenth Schedule is to be interpreted, keeping in view the above principles of interpretation and when in my view, the purpose of enacting paragraph 2 could be no other than to ensure stability of the democratic system, which in the context of Cabinet/Parliamentary form of Government on the one hand means that a political party or a coalition of political parties which has been voted to power, is entitled to govern till the next election, and on the other, that opposition has a right to censure the functioning of the Government and even overthrow it by voting it out of power if it had lost the confidence of the people, then voting or abstaining from voting by a member contrary to any direction issued by his party would by necessary implication envisage voting or abstaining from voting in regard to a motion or proposal, which if failed, as a result of lack of requisite support in the House, would result in voting the Government out of power, which consequence necessarily follows due to well established constitutional convention only when either a motion of no-confidence is passed by the House or it approves a cut-motion in budgetary grants. Former because of the implications of article 75(3) of the Constitution and latter because no Government can function without money and when Parliament declines to sanction money, then it amounts to an expression of lack of confidence in the Government. When so interpreted the clause (b) of sub-paragraph (1) of paragraph 2 would leave the members free to vote according to their views in the House in regard to any other matter that comes up before it."

(lxxv) "Paragraph 2(b) when thus viewed cannot be considered to be destructive of the Parliamentary democracy particularly when a Government which is truly unpopular and had lost the confidence of the people, can be voted out, without the members incurring disqualification in terms of paragraph 2 as a result of exemption envisaged by paragraph 3. Hence, in my view, it was within the

constituent power of the Parliament to enact the above said amending provision".

(lxxvi) "Now coming to the merits of the case, it may be observed that Mr. D.D. Thakur, the learned counsel appearing for respondent No. 6 has argued that the order of the Speaker dated 8 May 1986 suffers from three infirmities :—

(i) That the question of disqualification of the members, in question, *i.e.* the petitioners, had not been referred to him and, therefore, there was no occasion for him to pass that order in terms of paragraph 6, read with paragraph 3 of Tenth Schedule;

(ii) That the said order was void as it had been passed in violation of principles of natural justice, in that the Leader of the original Akali Dal Legislature Party or its President, Shri Surjit Singh Barnala, respondent No. 7, had not been given any opportunity of hearing before passing the said order; and

(iii) That provisions of paragraph 3 were not at all attracted, so as to save the petitioners from disqualification in terms of paragraph 2, because there had not occurred any political split in the Shiromani Akali Dal, led by respondent No. 7, whereas provisions of paragraph 3 are attracted only when political split in the party had preceded the formation of the breakaway group of the said Legislature Party".

(lxxvii) Dealing with the last ground of attack against order first, it may be observed that the expression : "where a member of a House makes a claim that he and any other members of Legislature Party constitute the group representing a faction, which has arisen as a result of split in his "original political party" occurring in paragraph 3, almost in express terms is suggestive of the fact that a split in the original political party must precede before a breakaway group in the Legislature Party can lay claim to represent the breakaway faction of the original political party. The reason for prescribing political split of a party, as a condition precedent for saving the members belonging to the breakaway group of Legislature Party from disqualification in terms of paragraph 2 was intended in some measure to keep away personal aggrandisement as the motive for the members to resign from his party or to disobey the direction of his party envisaged in clause (b) of paragraph 2. The Parliament, in my opinion, had intended that it

must be only for reasons of differences on matters of policy and ideology that a member or group of members should be disassociating from their party, if they were to escape disqualification in terms of paragraph 2. This, they tried to ensure by envisaging that there must have been a split in the political party and the breakaway group of the Legislature party should be owing allegiance to such breakaway faction of the original political party. Mr. D.D. Thakur, however, canvassed that the expression 'split' envisages split to the party all along the line, *i.e.* from the apex forum down to the lowest forum of the party. Mr. D.D. Thakur also suggested that a split should be of a sizeable nature and that mere disassociation of breakaway group of Legislature Party from their political party would not constitute split in the party".

(lxxviii) "The expression 'split' in the original political party is not amenable to a straitjacket definition and it was perhaps for that reason that the Parliament had refrained from defining the said expression. In other words, the Parliament had intended flexible approach whilst construing the said expression. The reason is not far to seek. No standard or model constitution is prescribed for the political parties, either by any stature or by any convention. The political parties in India are not even required to be registered. For the purpose of Tenth Schedule, the Parliament had not even intended that the political party should have been a recongnised National or State level party in terms of the Election Symbols (Reservation and Allotment) Order, 1968, issued *vide* Notification No. S.O. 2959, dated 31 August 1968, in exercise of the powers conferred by article 324 of the Constitution, read with rule 5 and rule 10 of the Conduct of Elections Rules, 1961."

(lxxix) Without being exhaustive, in my opinion, the minimum requirement of 'split' in the political party would be public disassociation from the political party and declaration of intention publicly to form a breakaway party or an altogether a new party; that such disassociation from the original political party be on account of ideological differences with the party, which are expressed openly and publicly and the same are taken notice of, at least by the Press. However, the strength of such breakaway faction of the political party and the standing in the original party of such members for the purpose of construing the expression;

'political split' would not be material. In other words numerical strength of the breakaway faction may be virtually negligible."

(lxxx) "Mr. Shanti Bhushan next argued that the use of the expression 'claim in paragraph 3' – envisages that one-third or more members of the original Legislature Party had simply to make a claim that they constitute a group, which represents a faction which had arisen as a result of a split in the original political party and the Speaker had merely to satisfy himself as to the strength of such a group and no more, while deciding the question as to whether persons making a claim are saved from incurring the disqualification envisaged in paragraph 2".

(lxxxi) "I am afraid this contention cannot be accepted at its face value. If what Mr. Shanti Bhushan has suggested to be the true import of the expression : 'claim' used in paragraph 3, then the Speaker should accept the claim regarding the strength of the group, as claimed by the member without a demur. This, even Mr. Shanti Bhushan does not suggest and he concedes that the Speaker would be entitled to satisfy himself as to the correctness of the claim in regard to the strength of the group whether by counting heads or otherwise.

In terms of paragraph 3, the member in order to escape disqualification in terms of paragraph 2 makes two claims :—

(i) That as a result of 'political split' in his original party a faction has arisen and breakaway group represents that faction :

and

(ii) That the strength of the breakaway group is one–third of the original Legislature party.

If the Speaker has to satisfy himself regarding the strength of the breakaway Legislature group, he has also to satisfy himself whether they represent a faction that had arisen, as a result of the 'split' in the political party?"

(lxxxii) "The next question regarding the validity of order of the Speaker that falls for consideration is as to whether he could be considered to have been legally seized of the matter in terms of paragraph 6 (1) of the Tenth Schedule. In other words, whether an occasion had arisen for him to go into the question of disqualification of the petitioners? It has been contended by Mr. D.D. Thakur, the learned counsel for respondent No. 6 that the expression : "the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such

House", occurring in paragraph 6 of Tenth Schedule, expressly envisages when read with the portion that precedes it; that first the question whether a member of a House has become subject to disqualification, must arise for consideration and thereafter this question has to be referred for the decision of the Chairman or the Speaker, as the case may be?"

(lxxxiii) "The language of paragraph 6 does not provide a clue as to the person or authority; which is to refer such a question to the Speaker or the Chairman, as the case may be. The language of paragraph 6 is almost in *pari materia* with the language of clause (1) of article 192 of the Constitution of India and their Lordships in Brundaban Nayak's case (supra) had an occasion to consider as to when such a question arises and who can refer it to the Governor for his decision. The facts of the case were that the appellant — Brundaban Nayak was elected as a member of the Legislative Assembly of Orissa in 1961, and was appointed as one of the Ministers of the Council of Ministers in the said State. On August 18, 1964, one of the respondents, namely — P. Biswal applied to the Governor of Orissa alleging that the appellant Brundaban Nayak had incurred a disqualification subsequent to his election under article 191(1)(e) of the Constitution, read with Section 7 of the Representation of the People Act, 1951. On 10 September 1964, the Chief Secretary to the Government of Orissa forwarded the said complaint to the Election Commission of India under the instructions of the Governor. In this communication, the Chief Secretary stated that a question had arisen under article 191 (1) of the Constitution 'whether the Member in question, had been subject to the disqualification alleged by respondent No. 2, P. Biswal, and so he requested the Election Commission of India in the name of the Governor to make such enquiries as it thought fit and give its opinion for communication to the Governor to enable him to give decision on the question raised. On 17 November 1964, the respondent—Election Commission of India served a notice on Brundaban Nayak, who in response to the said notice appeared before him through his counsel. He challenged the competency of the Election Commission of India to inquire into the matter. The counsel for the appellant sought an adjournment without submitting to the jurisdiction of the Election Commission of India. The Election Commission of India declined

adjournment and heard the counsel for the respondent No. 2 and reserved its order and noted that its opinion would be communicated to the Governor as early as possible. It was at that stage that Brundaban Nayak filed a petition under article 226 of the Constitution of India in the High Court, praying that the inquiry which the Election Commission of India was holding should be quashed on the ground that it was incompetent and without jurisdiction. The writ petition was summarily dismissed by the High Court. The matter reached ultimately the Supreme Court."

(lxxxiv) "The other question that falls for consideration is as to whether an occasion had arisen for the petitioners to approach the Speaker and seek his decision in regard to the fact as to whether they were or were not saved from incurring the disqualification envisaged by paragraph 2? In this regard the following provisions of paragraph 3(b) and paragraph 8(a) are decisive of the interpretative approach :

> 3 (b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.
>
> 8 (a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong"

(lxxxv) "A perusal of provision of clause (b) of paragraph 3 would show that from the time of split, breakaway faction shall be deemed to be the political party to which the breakaway group of the legislature party would belong for the purposes of sub-paragraph (I) of paragraph 2 and it is to be his original political party for the purposes of paragraph 3. When such is the case, then the moment the original party splits then such members of the Legislature Party of the original party that owe allegiance to the breakaway faction are entitled to bring to the notice of the Speaker the factum of the split of the original party, as also the factum of their owing allegiance to breakaway faction of the original party in order to have the breakaway faction of the original political party entered into the Register envisaged to be maintained by the Speaker, in terms of clause (a) of paragraph 8, so that if any member thereafter was to resign from the breakaway faction or was to disregard the directions issued by such breakaway faction of the original political party, a question could be raised regarding his disqualification to be a

In view of the above, it was not at all legally necessary to hear respondent No. 7 or any representative of the Shiromani Akali Dal (Longowal) party and, therefore, the order does not suffer from any infirmity of the kind.

(xcii) "In the presence of this order, the action of the respondent No. 6, the present Speaker, in issuing the impugned show cause notice was clearly untenable and was without jurisdiction. In the face of order the complaint by respondent No. 7 in his application to the effect that the petitioners had not obeyed the directions issued by him to vote in a given manner in regard to the elections of the Speaker or the Deputy Speaker, held on 2 June, 1986, was not required to be taken notice of by respondent No. 6 much less to be persuaded to issue the impugned show cause notice to the petitioners. For the same reason, the action of the Speaker, in my opinion, in rejecting the application of Shri Amarinder Singh to be recognized the Leader of the breakaway group in the Punjab Vidhan Sabha was illegal, in that in view of the order dated 8 May 1986, of his predecessor the respondent no. 6 had no option, but to recognise Shri Amarinder Singh as the Leader of the breakaway group, comprised of the petitioners. Because at least from 8 May 1986 splinter faction of Shiromani Akali Dal became separate political party and the member elected as Leader by the members of the breakaway group of Akali Dal Legislature Party that owed allegiance to it became the Leader of the Akali Dal breakaway group.

(xciii) "Before closing the Judgment, I may summarize the conclusion that I have reached :

(a) That paragraph 2 (b) after being read down envisages incurring of disqualification by a member only when he votes or abstains from voting contrary to the direction of the political party on a Motion of No-confidence or a cut-motion on budgetary grant; that when so read, paragraph 2 is not destructive of parliamentary democracy, which is a basic feature of the Constitution and forms part of the basic structure of the Constitution of India, nor is it destructive of two other alleged basic features of the Constitution, namely -

(i) the Federal structure of the Constitution

(ii) separation of powers between the three wings of the State, namely - Executive, Legislature and Judiciary.

(b) Paragraph 6 does not in any manner affect the powers of the High Court and the Supreme Court under article 226 and article 136, respectively of the Constitution of India and therefore, this did not call for ratification in terms of proviso to clause (2) of article 368 of the Constitution of India;

(c) Paragraph 7 ousted the jurisdiction of the High Court under article 226 and that of the Supreme Court under article 136 of the Constitution of India in regard to all matters connected with the disqualification of a member of the House under the Tenth Schedule, which expression comprehended within its fold the decision of the Speaker or, as the case may be, of the Chairman of the House rendered under sub-paragraph 6. Since articles 226 and 136 of the Constitution of India are entrenched provisions and an amendment of these articles to be constitutionally valid, has to be ratified in terms of the proviso to clause (2) of article 368 of the Constitution and, such ratification admittedly having not been secured before the President gave assent to the Bill, the provisions of paragraph 7 are constitutionally invalid and, therefore, have to be struck down as constitutionally invalid and stillborn provision.

(d) That except Paragraph 7 of Tenth Schedule, the rest of the Act, in question, is constitutionally valid.

(e) That the order of the Speaker dated 8 May 1986, is legal and valid.

(f) That the Speaker, respondent No. 6, acted beyond his jurisdiction in entertaining the application of respondent No. 7 and in issuing the impugned show cause notice.

(g) That the speaker, respondent No. 6, had no option but to accept the application of Shri Amarinder Singh and recognize him as Leader of the breakaway group of the Akali Dal Party in view of the order of his predecessor dated 8 May 1986 and that his order dated 4 July 1986, rejecting the application of Shri Amarinder Singh is illegal.

(xciv) In the result, excepting paragraph 7 of Tenth Schedule, rest of the Constitution (Fifty-second Amendment) Act, 1985, is held to be constitutionally valid. Paragraph 7 of Tenth Schedule of the Constitution (Fifty-second Amendment) Act, 1985, is struck down as

constitutionally invalid and stillborn provision. The show cause notice dated 13 June 1986, issued by the Speaker, Shri Surjit Singh Minhas, respondent No. 6 and Order dated 4 July 1986, of Shri Surjit Singh Minhas, Speaker, respondent No. 6 are quashed as being illegal, whilst the order dated 8 May 1986 of the respondent No. 6 is held to be legal and valid. The Writ Petitions are disposed of accordingly. No costs.

H.N. Seth, C.J. and R.N. Mittal,

(xcv) We have carefully gone through the judgments of Tewatia, J. and Goyal, J.

(xcvi) Both the learned Judges have held that paragraph 6 of the Tenth Schedule of the Constitution of India does not affect the powers of the High Court and the Supreme Court under article 226 and article 136 respectively of the Constitution of India and, therefore, the paragraph did not require ratification under article 368; that paragraph 7 ousts the jurisdiction of the High Court under article 226 and that of the Supreme Court under article 136 of the Constitution of India and, therefore, it required ratification; and that paragraph 7 is not constitutionally valid whereas the other provisions of the Amendment Act are valid.

(xcvii) We respectfully agree with the view expressed by them.

(xcviii) So far as quashing of the order is concerned both the learned Judges have held that the same deserves to be quashed, but for different reasons. We agree that the order, deserves to be set aside for the reasons given by Brother Goyal.

(xcix) However, there is difference of opinion between the learned Judges on the following points :

(a) Whether paragraph 2 (b) should be read down in order to save it from being unconstitutional ?

(b) Whether order of the Speaker dated 8 May 1986, is an order within the purview of paragraph 6, if so whether it is legal and valid ? and

(c) Whether the Speaker acted beyond jurisdiction in entertaining the application of Respondent and issuing the impugned show cause Notice

(c) On the aforementioned points as also generally we respectfully agree

with the judgment rendered by Goyal, J.

J.V. Gupta, J. :–

(ci) I have perused the judgments prepared by Brothers Tewatia and Goyal. I have also noted the opinion expressed by Chief Justice and Brother R.N. Mittal. I entirely agree with the view expressed by Brother Tewatia.

Order of the Court

(cii) We hold that except for paragraph 7 of the Tenth Schedule, rest of the Constitution (Fifty-second Amendment) Act, 1985 is constitutionally valid; paragraph 7 of the Tenth Schedule of the Constitution (Fifty-second Amendment) Act, 1985 is struck down as constitutionally invalid and stillborn; the order of the Speaker, dated 4 July 1986 is quashed; remaining reliefs claimed in the petition are declined. The writ petitions are disposed of accordingly. Parties are directed to bear their own costs.

Supreme Court of India

Kihota Hollohon

vs.

*Zachilhu & Others**

Court in the Majority Judgment Held:

- *Paragraph 2 of the Tenth Schedule is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the Legislatures of the States. It does not violate their conscience. The provisions of paragraph do not violate any right or freedom under articles 105 and 194 of the Constitution.*
- *Having regard to the background and evolution of the principles underlying the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, the provisions of paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effects of articles 136, 226 and 227 of the Constitution of India and, therefore, the amendment would require to be ratified in accordance with the proviso to sub-article (2) of article 368.*
- *Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in paragraph 6(1) does not detract from or abrogate judicial review under articles 136,226 and 227 of the Constitution in so far as infirmities based on violations or constitutional mandates, mala fides, non-compliance with rules of natural justice and perversity, are concerned.*

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* AIR 1993, SC, 412

- *The deeming provision in paragraph 6 (2) of the Tenth Schedule attracts an immunity analogous to that in article 122 (1) and 212(1) of the Constitution as understood and explained in Keshav Singh's case (1965(1) SCR 413) to protect the validity of proceedings from mere irregularities of procedure. The deeming provisions, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope or the fiction accordingly.*
- *The vesting of adjudicatory functions in the Speakers/Chairmen under Tenth Schedule would not by itself vitiate the provision on the ground of likelihood of political bias. Vestiture of power to adjudicate questions under the Tenth Schedule in such a constitutional functionaries should not be considered exceptionable. It would, indeed, be unfair to the high tradition of that great office to say that the investiture in it of determinative jurisdiction under Tenth Schedule would be vitiated for violation of a basic feature of democracy.*
- *Words "any direction" in para 2(1)(b) require to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule.*
- *For this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(1)(b) would have to be limited to a vote on Motion of Confidence or No-confidence in the Government or, where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a member against the direction by the political party would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.*

Court in the minority opinion held:

- *Para 7 of the Tenth Schedule which seeks to make a change in article 136 which is a part of Chapter IV of Part V and articles 226 and 227 which form part of Chapter V of Part VI of the*

Constitution, has not been enacted by incorporation in a Bill seeking to make the Constitutional Amendment in the manner prescribed by clause (2) read with the proviso therein of article 368. Para 7 of the Tenth Schedule is, therefore, unconstitutional and to that extent at least the Constitution does not stand amended in accordance with the Bill seeking to make the Constitutional Amendment.

* *It is not para 7 alone but the entire Constitution (Fifty-second Amendment) Act, 1985 itself which is rendered unconstitutional being an abortive attempt to so amend the Constitution. It is the entire Bill and not merely para 7 of the Tenth Schedule therein which required prior ratification by the State Legislatures before its presentation to the President for his assent, it being a joint exercise by the Parliament and State Legislatures.*
* *It cannot be doubted in view of the clear language of sub-paragraph (2) of para 6 that it relates to clause (1) of both articles 122 and 212 and the legal fiction cannot, therefore, be extended beyond the limits of the express words used in the fiction.*
* *In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such disputes with no provision for any appeal or revision against the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, not withstanding the great dignity attaching to that office with the attribute of impartiality.*

Facts of the case

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

2. The petitioner submitted that aforesaid members had resigned individually for causing a split in the Congress (I) Party and they did not constitute the one-third of the existing strength of Congress(I) MLAs in the

House, which was 24.

3. After taking into consideration the facts, circumstances of the case, relevant law and rules Shri Thenucho, Speaker, Nagaland Legislative Assembly in his decision, under the Tenth Schedule held as follows:

"It is clear from the declaration, which is uncontroverted, that they had decided to voluntarily give up their membership of the original political party namely, the Congress (I) Party. Moreover, the plea they have taken is not inconsistent with the plea set up in the petition.

Furthermore, 5 members do not constitute one-third of the original political party which had a strength of 24 in the Nagaland Assembly.

I, therefore, accept the declaration signed by the aforesaid MLAs to be true and accordingly the statements made in the said petition being uncontroverted are taken as true and correct".

The said five members were accordingly disqualified from the membership of the Nagaland Legislative Assembly by the Speaker.

4. The decision of the Speaker, Nagaland Legislative Assembly was challenged by way of a writ petition by Shri Zachilhu & other members who had been disqualified, in the High Court of Guwahati. Among other things, the constitutional validity of the Tenth Schedule to the Constitution introduced by the Constitution (Fifty-second Amendment) Act, 1985 was also challenged.

5. Around that time, in the wake of varied interpretation of the provisions of the Tenth Schedule by the Presiding Officers in their decisions under the Tenth Schedule, some of its provisions were challenged in various High Courts of the country as being illegal and unconstitutional. Petitions were also filed in different High Courts from time to time against the decisions taken by various Presiding Officers of different Legislatures under the Tenth Schedule to the Constitution. All such petitions were transferred by the Supreme Court of India to themselves, on the request of the Government of India, as important questions of law and Constitution were involved. The Supreme Court accordingly constituted a five-judge Constitution Bench to consider all these Writ Petitions, Transfer Petitions, Civil Appeals, Special Leave Petitions.

Decision/Judgment of the Court

The five-judge Constitution Bench of the Supreme Court, while admitting the Transfer Petition (Civil) No. 40 of 1991 in the Kihota Hollohon *vs.* Zachilhu and Others, *vide* their judgment dated 12 November 1991 pronounced their findings and conclusions, on the constitutional and legal issues pertaining to the

validity of the Tenth Schedule to the Constitution.

The majority judgment was given by Justice M.N.Venkatachaliah, K Jayachandra Reddy and S.C. Agrawal. The minority judgment was given by Justices Lalit Mohan Sharma and J.S. Verma.

In their judgment the Supreme Court did not go into the factual controversies raised in the Writ Petition before the Guwahati High Court in Rule No. 2421 of 1990 from which Transfer Petition No. 40 of 1991 arose. The said writ petition was remitted to the Guwahati High Court for its disposal in accordance with law.

The operative conclusions of the Supreme Court in their majority opinion in their judgment dated 12 November 1991 are as under:

(Per Venkatachaliah, K. Jayachandra Reddy and Agrawal J.J.) :-

The Writ Petitions, Transfer Petitions, Civil Appeals, Special Leave Petitions and other connected matters raising common question as to the constitutional validity of the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, were heard together. Some of these matters involve investigation and determination of factual controversies and of the extent of applicability to them of the conclusions reached on the various constitutional issues. That exercise shall have to be undertaken in the individual cases separately.

1. The present judgment is pronounced in the Transfer Petition No. 40 of 1991 seeking the transfer of the Writ Petition, Rule No. 2421/90 on the file of the High Court of Guwahati to this Court.

2. The Transfer Petition is allowed and the aforesaid Writ Petition is withdrawn to this Court for the purpose of deciding the constitutional issues and of declaring the law on the matter.

3. For the reasons to be set out in the detailed judgment to follow, the following are the operative conclusions in the majority opinion on the various constitutional issues :

(A) that having regard to the background and evolution of the principles underlying the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, the provisions of paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effect of articles 136, 226 and 227 of the Constitution of India and, therefore, the amendment would

require to be ratified in accordance with the proviso to sub-article (2) of article 368 of the Constitution of India.

(B) That there is nothing in the said proviso to article 368(2) which detracts from the severability of a provision on account of the inclusion of which the Bill containing the Amendment requires ratification from the rest of the provisions of such Bill which do not attract and require such ratification. Having regard to the mandatory language of article 368(2) that "thereupon the Constitution shall stand amended" the operation of the proviso should not be extended to Constitutional amendments in a Bill which can stand by themselves without such ratification.

(C) That, accordingly, the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, to the extent of its provisions which are amenable to the legal sovereign of the amending process of the Union Parliament cannot be overborne by the proviso which cannot operate in that area. There is no justification for the view that even the rest of the provisions of the Constitution (Fifty-second Amendments) Act, 1985, excluding paragraph 7 of the Tenth Schedule become constitutionally infirm by reason alone of the fact that one of its severable provisions which attracted and required ratification under the proviso to article 368(2) was not so ratified.

(D) That paragraph 7 of the Tenth Schedule contains a provision which is independent of, and stands apart from, the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of paragraph 7 and are complete in themselves workable and are not truncated by the excision of paragraph 7.

(E) That the paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the Legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of paragraph 2 do not violate any rights or freedom under

articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

(F) The contention that provisions of the Tenth Schedule, even with the exclusion of paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected members and, therefore, of the principles of Parliamentary democracy is unsound and is rejected.

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

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

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

(I) That the deeming provision in paragraph 6(2) of the Tenth Schedule' attracts an immunity analogous to that in articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh's case (Spl. Ref. No. 1, (1965) 1 SCR 413 : (AIR) 1965 SC 745), to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of the fiction accordingly.

(J) The contention that the investiture of adjudicatory functions in the

Speakers / Chairmen would by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected.; The Speakers / Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far-reaching decisions in the functioning of Parliamentary democracy. Vestiture of power to adjudicate questions under the Tenth Schedule in such a constitutional functionaries should not be considered exceptionable.

(K) In the view we take of the validity of paragraph 7 it is unnecessary to pronounce on the contention that judicial review is a basic structure of the Constitution and paragraph 7 of the Tenth Schedule violates such basic structure.

The factual controversies raised in the Writ Petition will, however, have to be decided by the High Court applying the principles declared and laid down by this judgment. The Writ Petition is, accordingly, remitted to the High Court for such disposal in accordance with law.

The operative conclusions of the Supreme Court in their minority opinion in their judgment dated 12 November 1991 are as under :

(Operative conclusions in the minority opinion) (per Sharma and Verma, JJ.) :-

For the reasons to be given in our detailed judgment to follow, our operative conclusions in the minority opinion on the various constitutional issues are as follows :

1. Para 7 of the Tenth Schedule, in clear terms and in effect excludes the jurisdiction of all courts, including the Supreme Court under article 136 and High Courts under articles 226 and 227 to entertain any challenge to the decision under para 6 on any ground even of illegality or perversity, not only at an interim stage but also after the final decision on the question of disqualification on the ground of defection.

2. Para 7 of the Tenth Schedule, therefore, in terms and in effect, makes a change in article 136 in Chapter IV of Part V; and articles 226 and 227 in Chapter V of Part VI of the Constitution, attracting the proviso to clause (2) of article 368.

3. In view of para 7 in the Bill resulting in the Constitution (Fifty-second Amendment) Act, 1985 it was required to be ratified by the Legislature of not

less than one-half of the States as a condition precedent before the Bill could be presented to the President for assent, in accordance with the mandatory special procedure prescribed in the proviso to clause (2) of article 368 for exercise of the constituent powers. Without ratification by the specified number of State Legislatures, the stage for presenting the Bill for assent of the President did not reach and , therefore, the so-called assent of the President was *non est* and did not result in the Constitution standing amended in accordance with the terms of the Bill.

4. In the absence of ratification by the specified number of State Legislatures before presentation of the Bill to the President for his assent, as required by the proviso to clause (2) of article 368, it is not merely para 7 but, the entire Constitution (Fifty-second Amendment) Act, 1985 which is rendered unconstitutional, since the constituent power was not exercised as prescribed in article 368, and therefore, the Constitution did not stand amended in accordance with the terms of the Bill providing for the amendment.

5. Doctrine of severability cannot be applied to a Bill making a constitutional amendment where any part thereof attracts the proviso to clause (2) of article 368.

6. Doctrine of severability is not applicable to permit striking down para 7 alone saving the remaining provisions of the bill making the Constitutional amendment on the ground that para 7 alone attracts the proviso to clause (2) of article 368.

7. Even otherwise, having regard to the provisions of the Tenth Schedule of the Constitution inserted by the Constitution (Fifty-second Amendment) Act, 1985, the doctrine of severability does not apply to it.

8. Democracy is a part of the basic structure of the Constitution and free and fair elections with provision for resolution of disputes relating to the same as also for adjudication of those relating to subsequent disqualification by an independent body outside the House are essential features of the democratic system in our Constitution. Accordingly, an independent adjudicatory machinery for resolving disputes relating to the competence of members of the House is envisaged as an attribute of this basic feature. The tenure of the Speaker who is the authority in the Tenth Schedule to decide this dispute is dependent on the continuous support of the majority in the House and, therefore, he (the Speaker) does not satisfy the requirement of such an independent adjudicatory authority: and his choice as the sole arbiter in the matter violates an essential attribute of the basic feature.

9. Consequently, the entire Constitution (Fifty-second Amendment) Act, 1985 which inserted the Tenth Schedule together with clause (2) in articles 102 and 191, must be declared unconstitutional or an abortive attempt to so amend the Constitution.

10. It follows that the decisions rendered by the several Speakers under the Tenth Schedule must also be declared nullity and liable to be ignored.

11. On the above conclusions, it does not appear necessary or appropriate to decide the remaining questions urged.

Detailed judgment of the Supreme Court

The Supreme Court gave their detailed judgment in the matter on 18 February 1992.

The Supreme Court in their majority judgment held as follows:

Venkatachaliah, J. (For himself and on behalf of K. Jayachandra Reddy, S. C. Agrawal, JJ.) (Majority view) :

(i) "In these petitions the constitutional validity of the Tenth Schedule of the Constitution introduced by the Constitution (Fifty-second Amendment) Act, 1985, is assailed. These two cases were amongst a batch of Writ Petitions, Transfer Petitions, Civil Appeals, Special Leave Petitions and other similar and connected matters raising common questions which were all heard together. On 12 November 1991 we made an order pronouncing our findings and conclusions upholding the constitutional validity of the amendment and of the provisions of the Tenth Schedule, except for paragraph 7 which was declared invalid for want of ratification in terms of and as required by the proviso to article 368(2) of the Constitution. In the order dated 12 November 1991 our conclusions were set out and we indicated that the reasons for the conclusions would follow later. The reasons for the conclusions are now set out."

(ii) "This order is made in Transfer Petition No. 40 of 1991 and in Writ Petition No. 17 of 1991. We have not gone into the factual controversies raised in the Writ Petition before the Guwahati High Court in Rule No. 2421 of 1990 from which Transfer Petition No. 40 of 1991 arises. Indeed, in the order of 12 November 1991 itself the said Writ Petition was remitted to the High Court for its disposai

in accordance with law."

(iii) "Shri F. S. Nariman, Shri Shanti Bhushan, Shri M. C. Bhandare, Shri Kapil Sibal, Shri Sharma and Shri Bhim Singh, learned counsel addressed arguments in support of the petitions. Learned Attorney-General, Shri Soli Sorabjee, Shri R.K. Garg and Shri Santosh Hegde sought to support the constitutional validity of the amendment. Shri Ram Jethmalani has attacked the validity of the amendment for the same reasons as put forward by Shri Sharma."

(iv) Before we proceed to record our reasons for the conclusions reached in our order dated 12 November 1991, on the contentions raised and argued, it is necessary to have a brief look at the provisions of the Tenth Schedule. The Statement of Objects and Reasons appended to the Bill which was adopted as the Constitution (Fifty-second Amendmend) Act, 1985 says:

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. This Bill is meant for outlawing defection and fulfilling the above assurance.

On 8 December 1967, the Lok Sabha had passed an unanimous Resolution in terms following :

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

The said Committee known as the "Committee on Defections" in its report dated 7 January 1969, *inter alia*, observed :

"Following the Fourth General Election, in the short period between March 1967 and February 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and the Fourth General Election, at least 438 defections occurred in these 12 months alone. Among

> Independents, 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh, and West Bengal, 116 were included in the Council of Ministers which they helped to bring into being by defections. The other disturbing features of this phenomenon were : multiple acts of defections by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of the legislature or explanations by individual defectors, indifference on the part of defectors to political proprieties, constituency preference or public opinion; and the belief held by the people and expressed in the press that corruption and bribery were behind some of these defections.

The Committee on Defections recommended that a defector should be debarred for a period of one year or till such time as he resigned his seat and got himself re-elected, from appointment to the office of a Minister including Deputy Minister or Deputy Speaker, or any post carrying salaries or allowances to be paid from the Consolidated Fund of India or of the State or from the funds of Government Undertakings in public sector in addition to those to which the defector might be entitled as legislator. The Committee on Defections could not, however, reach an agreed conclusion in the matter of disqualifying a defector from continuing to be a Member of Parliament /State Legislator.

Keeping in view the recommendations of the Committee on Defections, the Constitution (Thirty-second Amendment) Bill, 1973 was introduced in the Lok Sabha on 16 May 1973. It provided for disqualifying a member from continuing as a member of either House of Parliament or the State Legislature on his voluntarily giving up his membership of the political party by which he was set up as a candidate at such election or of which he became a member after such election, or on his voting or abstaining from voting in such House contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf without obtaining prior permission of such party, person or authority. The said Bill, however, lapsed on account of dissolution of the House. Thereafter, the Constitution (Forty-eighth Amendment) Bill, 1979 was introduced in the Lok Sabha which also contained similar provisions for disqualification on the ground of defection. This Bill also lapsed

and it was followed by the Bill which was enacted into the Constitution (Fifty-second Amendment) Act, 1985.

(v) This brings to the fore the object underlying the provisions in the Tenth Schedule. The object is to curb the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The remedy proposed is to disqualify the member of either House of Parliament or of the State Legislature who is found to have defected from continuing as a member of the House. The grounds of disqualifications are specified in paragraph 2 of the Tenth Schedule. . .

(vi) The challenge to the constitutional validity of the Amendment which introduces the Tenth Schedule is sought to be sustained on many grounds. It is urged that the Constitutional Amendment introducing paragraph 7 of the Tenth Schedule, in terms and in effect, seeks to make a change in Chapter IV of Part V of the Constitution in that it denudes the jurisdiction of the Supreme Court under article 136 of the Constitution of India and in Chapter V of Part VI in that it takes away the jurisdiction of the High Courts under article 226 and that, therefore, the legislative Bill, before presentation to the President for assent, would require to be ratified by the Legislatures of not less than one-half of the States by resolution to that effect. In view of the admitted position that no such ratification was obtained for the Bill, it is contended, the whole Amending Bill — not merely paragraph 7 — fails and the amendment merely remains an abortive attempt to bring about an amendment. It is further contended that the very concept of disqualification for defection is violative of the fundamental values and principles underlying Parliamentary democracy and violates an elected representative's freedom of speech, right to dissent and freedom of conscience and is, therefore unconstitutional as destructive of a basic feature of the Indian Constitution. It is also urged that the investiture in the Speaker or the Chairman of the power to adjudicate disputed defections would violate an important incident of another basic feature of the Constitution, *viz.*, parliamentary democracy. It is contended that an independent, fair and impartial machinery for resolution of electoral disputes is an essential and important incident of democracy and that the vesting of the power of adjudication in the

Speaker or the Chairman - who, in the Indian Parliamentary system are nominees of political parties and are not obliged to resign their party affiliations after election — is violative of this requirement.

It is alternatively contended that if it is to be held that the amendment does not attract the proviso to article 368(2), then paragraph 7 in so far as it takes away the power of judicial review, which, in itself, is one of the basic features of the Constitution is liable to be struck down.

(vii) "There are certain other contentions which, upon a closer examination, raise issues more of construction than constitutionality. For instance, some arguments were expended on the exact connotations of a "split" as distinct from a "defection" within the meaning of paragraph 3. Then again, it was urged that under paragraph 2(b) the expression "any direction" is so wide that even a direction, which if given effect to and implemented might bring about a result which may itself be obnoxious to and violative of constitutional ideas and values would be a source of disqualification. These are, indeed, matters of construction as to how, in the context in which the occasion for the introduction of the Tenth Schedule arose and the high purpose it is intended to serve, the expression "any direction" occurring in paragraph 2(b) is to be understood. Indeed, in one of the decisions cited before us *(Prakash Singh Badal v. Union of India, AIR 1987 Punj. and Har. 263 (FB)* this aspect has been considered by the High Court. The decision was relied upon before us. We shall examine it presently.

(viii) "Supporting the constitutionality of the Amendment, respondents urge that the Tenth Schedule creates a non-justiciable constitutional area dealing with certain complex political issues which have no strict adjudicatory disposition. New rights and obligations are created for the first time *uno flatu* by the Constitution and the Constitution itself has envisaged a distinct constitutional machinery for the resolution of those disputes. These rights, obligations and remedies, it is urged, which are in their very nature and innate complexities are in political thickets and are not amenable to judicial processes and the Tenth Schedule has merely recognised this complex character of the issues and that the exclusion of this area is constitutionally preserved by imparting a finality to the decisions of

the Speaker or the Chairman and by deeming the whole proceedings as proceedings within Parliament or within the Houses of Legislature of the State envisaged in articles 122 and 212, respectively, and further by expressly excluding the Courts' jurisdiction under the paragraph 7.

Indeed, in constitutional and legal theory, it is urged, there is really no ouster of jurisdiction of Courts or of judicial review as the subject-matter itself by its inherent character and complexities is not amenable to but outside judicial power and that the ouster of jurisdiction under paragraph 7 is merely a consequential constitutional recognition of the non-amenability of the subject-matter to the judicial power of the State, the corollary of which is that the Speaker or the Chairman, as the case may be, exercising powers under paragraph 6(1) of the Tenth Schedule function not as a statutory Tribunal but as a part of the State's Legislative Department.

It is, therefore, urged that no question of the ouster of jurisdiction of Courts would at all arise inasmuch as in the first place, having regard to the political nature of the issues, the subject-matter is itself not amenable to judicial power. It is urged that the question in the last analysis pertains to the constitution of the House and the Legislature is entitled to deal with it exclusively.

(ix) "It is further urged that Judicial Review - apart from Judicial Review of the legislation as inherent under a written Constitution - is merely a branch of administrative law remedies and is by no means a basic feature of the Constitution and that, therefore, paragraph 7, being a constitutional provision cannot be invalidated on some general doctrine not found in the Constitution itself."

(x) "On the contentions raised and urged at the hearing the questions that fall for consideration are the following :

(A) The Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule is destructive of the basic structure of the Constitution as it is violative of the fundamental principles of parliamentary democracy, a basic feature of the Indian constitutionalism and is destructive of the freedom of speech, right to dissent and freedom of conscience as the provisions of the Tenth Schedule seek to penalise and disqualify elected representatives for the exercise of these rights and freedoms which are essential to the sustenance of the system of parliamentary democracy.

(B) Having regard to the legislative history and evolution of the principles underlying the Tenth Schedule, paragraph 7 thereof in terms and in effect, brings about a change in the operation and effect of articles 136, 226 and 227 of the Constitution of India and, therefore the Bill introducing the amendment attract the proviso to article 368(2) of the Constitution and would require to be ratified by the legislatures of the States before the Bill is presented for Presidential assent.

(C) In view of the admitted non-compliance with the proviso to article 368(2) not only paragraph 7 of the Tenth Schedule, but also the entire Bill resulting in the Constitution (Fifty-second Amendment) Act, 1985, stands vitiated and the purported amendment is abortive and does not in law bring about a valid amendment.

Or whether, the effect of such non-compliance invalidates paragraph 7 alone and the other provisions which, by themselves, do not attract the proviso do not become invalid.

(D) That even if the effect of non-ratification by the Legislatures of the States is to invalidate paragraph 7 alone, the whole of the Tenth Schedule fails for non-severability. Doctrine of severability, as applied to ordinary statutes to promote their constitutionality, is inapplicable to Constitutional Amendments.

Even otherwise, having regard to legislative intent and scheme of the Tenth Schedule, the other provisions of the Tenth Schedule, after the severance and excision of paragraph 7, become truncated, and unworkable and cannot stand and operate independently. The Legislature would not have enacted the Tenth Schedule without paragraph 7 which forms its heart and core.

(E) That the deeming provision in paragraph 6(2) of the Tenth Schedule attracts the immunity under articles 122 and 212. The Speaker and the Chairman in relation to the exercise of the powers under the Tenth Schedule shall not be subjected to the jurisdiction of any Court.

The Tenth Schedule seeks to and does create a new and non-justiciable area of rights, obligations and remedies to be

resolved in the exclusive manner envisaged by the Constitution and is not amenable to, but constitutionally immune from crucial adjudicative processes.

(F) That even if paragraph 7 erecting a bar on the jurisdiction of Courts is held inoperative, the Courts' jurisdiction is, in any event, barred as paragraph 6(1) which imparts a constitutional 'finality' to the decision of the Speaker or the Chairman, as the case may be, and that such concept of 'finality' bars examination of the matter by the Courts.

(G) The concept of free and fair elections as a necessary concomitant and attribute of democracy which is a basic feature includes an independent impartial machinery for the adjudication of the electoral disputes. The Speaker and the Chairman do not satisfy these incidents of an independent adjudicatory machinery.

The investiture of the determinative and adjudicative jurisdiction in the Speaker or the Chairman, as the case may be, would, by itself, vitiate the provision on the ground of reasonable likelihood of bias and lack of impartiality and therefore denies the imperative of an independent adjudicatory machinery. The Speaker and Chairman are elected and hold office on the support of the majority party and are not required to resign their membership of the political party after their election to the office of the Speaker or Chairman.

(H) "That even if paragraph 7 of the Tenth Schedule is held not to bring about a change or affect articles 136, 226 and 227 of the Constitution, the amendment is unconstitutional as it erodes and destroys judicial review which is one of the basic features of the Constitution".

(xi) "Re : Contention (A) :

The Tenth Schedule is part of the Constitution and attracts the same canons of construction as are applicable to the expounding of the fundamental law. One constitutional power is necessarily conditioned by the others as the Constitution is one "coherent document". Learned counsel for the petitioners accordingly say that the Tenth Schedule be read subject to the basic features of the

Constitution. The Tenth Schedule and certain essential incidents of democracy, it is urged, cannot co-exist.

(xii) "It was strenuously contended that the provisions of the Tenth Schedule constitute a flagrant violation of those fundamental principles and values which are basic to the sustenance of the very system of parliamentary democracy. The Tenth Schedule, it is urged, negates those very foundational assumptions of parliamentary democracy; of freedom of speech; of the right to dissent and of the freedom of conscience. It is urged that unprincipled political defections may be an evil, but it will be the beginning of much greater evils if the remedies, graver than the disease itself, are adopted. The Tenth Schedule, they say, seeks to throw away the baby with the bath-water. Learned counsel argued that "crossing the floor", as it has come to be called, mirrors the meanderings of a troubled conscience on issues of political morality and to punish an elected representative for what really amounts to an expression of conscience negates the very democratic principles which the Tenth Schedule is supposed to preserve and sustain.

(xiii) "The points raised in the petitions are, indeed, far-reaching and of no small importance - invoking the 'sense of relevance of constitutionally stated principles to unfamiliar settings'. On the one hand there is the real and imminent threat to the very fabric of Indian democracy posed by certain levels of political behaviour conspicuous by their utter and total disregard of well recognised political proprieties and morality. These trends tend to degrade the tone of political life and, in their wider propensities, are dangerous to and undermine the very survival of the cherished values of democracy. There is the legislative determination through experimental constitutional processes to combat that evil.

On the other hand, there are, as in all political and economic experimentations, certain side-effects and fall-out which might affect and hurt even honest dissenters and conscientious objectors. These are the usual plus and minus of all areas of experimental legislation. In these areas the distinction between what is constitutionally permissible and what is outside it is marked by a 'hazy gray-line' and it is the Court's duty to identify, "darken and deepen" the demarcating line of constitutionality - a task in which some element of Judges' own perceptions of the constitutional ideals inevitably participate. There

is no single litmus test of constitutionality. Any suggested sure decisive test might after all furnish a "transitory delusion of certitude" where the "complexities of the strands in the web of constitutionality which the Judge must alone disentangle" do not lend themselves to easy and sure formulations one way or the other. It is here that it becomes difficult to refute the inevitable legislative element in all constitutional adjudications.

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(xiv) "Shri Sharma contends that the rights and immunities under article 105(2) of the Constitution which according to him are placed by judicial decisions even higher than the fundamental right in article 19(1) (a), have violated the Tenth Schedule. There are at least two objections to the acceptability of this contention. The first is that the Tenth Schedule does not impinge upon the rights or immunities under article 105(2).

Secondly, on the nature and character of electoral rights this Court in *Jyoti Basu v. Debi Ghosal (1982) 3 SCR 318 : (AIR 1982 SC 983)* oberved:

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation." (Page 326 of SCR) : (at p. 986 of AIR)

Democracy is a basic feature of the Constitution. Whether any particular brand or system of Government by itself has this attribute of a basic feature, as long as the essential characteristics that entitle a system of Government to be called democratic are otherwise satisfied is not necessary to be gone into. Election conducted at regular prescribed intervals is essential to the democratic system envisaged in the Constitution. So is the need to protect and sustain the purity of the electoral process. That may take within it the quality, efficacy and adequacy of the machinery for resolution of electoral disputes. From that it does not necessarily follow that the rights and immunities under sub-article (2) of article 105 of the Constitution are elevated into fundamental rights and that the Tenth Schedule would have to be struck down for its inconsistency with article 105(2) as urged by Shri Sharma.

(xv) "Parliamentary democracy envisages that matters involving implementation of policies of the Government should be discussed

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

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

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

Schedule. We shall deal with this aspect separately".

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

(xvii) "It was then urged by Shri Jethmalani that the distinction between the conception of "defection" and "split" in the Tenth Schedule is so thin and artificial that the differences on which the distinction rests are indeed an outrageous defiance of logic. Shri Jethmalani urged that if floor-crossing by one member is an evil, then a collective perpetration of it by one-third of the elected members of a party is no better and should be regarded as an aggravated evil both logically and from the part of its aggravated consequences. But the Tenth Schedule, says Shri Jethmalani, employs its own inverse ratiocination and perverse logic to declare that where such evil is perpetrated collectively by an artificially classified group of not less than one-third members of that political party that would not be a "defection" but a permissible "split" or "merger".

This exercise to so hold-up the provisions as such crass imperfection is performed by Shri Jethmalani with his wonted forensic skill. But we are afraid what was so attractively articulated, on closer examination, is, perhaps, more attractive than sound. The underlying premise in declaring an individual act of defection as forbidden is that lure of office or money could be presumed to have prevailed. Legislature has made this presumption on its own perception and assessment of the extant standards of political proprieties and morality. At

the same time legislature envisaged the need to provide for such "floor-crossing" on the basis of honest dissent. That a particular course of conduct commended itself to a number of elected representatives might, in itself, lend credence and reassurance to a presumption of *bona fides*. The presumptive impropriety of motives progressively weakens according as the numbers sharing the action and there is nothing capricious and arbitrary in this legislative perception of the distinction between 'defection' and 'split'.

Where is the line to be drawn? What number can be said to generate a presumption of *bona fides*?...

Accordingly we hold :

that the paragraph 2 of the Tenth Schedule to the Constitution is valid. Its provisions do not suffer from the vice of subverting democratic rights of elected members of Parliament and the Legislature of the State. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of paragraph 2 do not violate any rights or freedom under articles 105 and 194 of the Constitution.

The provisions are salutary and are intended to strengthen the fabric of Indian parliamentary democracy by curbing unprincipled and unethical political defections.

The contention that the provisions of the Tenth Schedule, even with the exclusion of paragraph 7, violate the basic structure of the Constitution in that they affect the democratic rights of elected members and, therefore, (sic) of the principles of parliamentary democracy is unsound and is rejected.

Re : Contention (B) :

(xviii) The thrust of the point is that paragraph 7 brings about a change in the provisions of Chapter IV of Part V and Chapter V of Part VI of the Constitution and that, therefore, the amending Bill falls within proviso to article 368(2). We might, at the outset, notice Shri Sibal's submissions on a point of construction of paragraph 7. Shri Sibal urged that paragraph 7 properly construed, does not seek to oust the jurisdiction of Courts under articles 136, 226 and 227 but merely prevents an interlocutory intervention or a *quia-timet* action. He urged that the words "in respect of any matters connected with the disqualification of a member" seek to bar jurisdiction only till the matter is finally decided by the Speaker or Chairman, as the case may be, and does not extend beyond that stage and that in dealing

with the dimensions of exclusion of the exercise of judicial power the broad considerations are that provisions which seek to exclude Courts' jurisdiction shall be strictly construed...

But the rules of construction are attracted where two or more reasonably possible constructions are open on the language of the statute. But, here both on the language of paragraph 7 and having regard to the legislative evolution of the provision, the legislative intent is plain and manifest. The words "no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a member" are of wide import and leave no constructional options. This is reinforced by the legislative history of the anti-defection law. The deliberate and proposed presence of paragraph 7 is clear from the history of the previous proposed legislations on the subject. A comparison of the provisions of the Constitution (Thirty-second Amendment) Bill, 1973 and the Constitution (Forty-eighth Amendment) Bill, 1978, (both of which had lapsed) on the one hand and the Constitution (Fifty-second Amendment) Bill, 1985, would bring out the avowed and deliberate intent of paragraph 7 in the Tenth Schedule. The previous Constitution (38th and 48th Amendment) Bills contained similar provisions for disqualification on grounds of defection, but, these Bills did not contain any clause ousting the jurisdiction of the Courts. Determination of disputed disqualification was left to the Election Commission as in the case of other disqualification under articles 102 and 103 in the case of members of Parliament and articles 191 and 192 in the case of members of Legislature of the States. The Constitution (Fifty-second Amendment) Bill for the first time envisaged the investiture of the power to decide disputes on the Speaker or the Chairman. The purpose of the enactment of paragraph 7, as the debates in the Houses indicate, was to bar the jurisdiction of the Courts under articles 136, 226 and 227 of the Constitution of India. Shri Sibal's suggested contention would go against all these overwhelming interpretative criteria apart from its unacceptability on the express language of paragraph 7".

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

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

That having regard to the background and evolution of the principles underlying the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth schedule in the Constitution of India, the provisions of paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation and effect of articles 136, 226 and 227 of the Constitution of India and, therefore, the amendment would require to be ratified in accordance with the proviso to sub-article (2) of article 368 of the Constitution of India".

Re : Contentions 'C' and 'D:'

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

(xxi) "The Constitution provides for amendment in articles 4, 169, 368, paragraph 7 of Fifth Schedule and paragraph 21 of Sixth Schedule. Article 4 makes provisions for amendment of the First and the Fourth Schedules, article 169 provides for amendment in the provision of the Constitution which may be necessary for abolition or creation of Legislative Councils in States, paragraph 7 of the Fifth Schedule provides for amendment of the Fifth Schedule and

paragraph 21 of Sixth Schedule provides for amendment of the Sixth Schedule. All these provisions prescribe that the said amendments can be made by a law made by Parliament which can be passed like any other law by a simple majority in the Houses of Parliament. Article 368 confers the power to amend the rest of the provisions of the Constitution. In sub-article (2) of article 368, a special majority of two-thirds of the members of each House of Parliament present and voting and majority of total membership of such House - is required to effectuate the amendments. The proviso to sub-article (2) of article 368 imposes a further requirement that if any change in the provisions set out in clauses (a) to (e) of the proviso, is intended it would then be necessary that the amendment be ratified by the legislatures of not less than one-half of the States.

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

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

(xxiii) "Is there anything in the procedural limitations imposed by sub-article (2) of article 368 which excludes the doctrine of severability in respect of a law which violates the said limitations? Such a violation may arise when there is a composite Bill or what is in statutory context or jargon called a 'Rag-Bag' measure seeking amendments to several statutes under one amending measure which seeks to amend various provisions of the Constitution some of which may attract clauses (a) to (e) of the proviso to article 368(2) and

the bill, though passed by the requisite majority in both the Houses of Parliament has received the assent of the President without it being sent to States for ratification or having been so sent fails to receive such ratification from not less than half the States before the Bill is presented for assent. Such an Amendment Act is within the competence of Parliament insofar as it relates to provisions other than those mentioned in clauses (a) to (e) of proviso to article 368(2) but in respect of the amendments introduced in provisions referred to in clauses (a) to (e) of proviso to article 368 (2). Parliament alone is not competent to make such amendments on account of some constitutionally recognised federal principle being invoked. If the doctrine of severability can be applied it can be upheld as valid in respect of the amendments within the competence of Parliament and only the amendments which Parliament alone was not competent to make could be declared invalid."

(xxiv) "Is there anything compelling in the proviso to article 368(2) requiring it to be construed as excluding the doctrine of severability to such an amendment? It is settled rule of statutory construction that "the proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case" and that where "the language of the main enactment, is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment so as to exclude from it by implication what clearly falls within its express terms..."

The proviso to article 368 (2) appears to have been introduced with a view to giving effect to the federal principle. In the matter of amendment of provisions specified in clauses (a) to (e) relating to legislative and executive powers of the States *vis-a-vis* the Union, the Judiciary, the election of the President and the amending power itself, which have a bearing on the States, the proviso imposes an additional requirement of ratification of the amendment which seeks to effect a change in those provisions before the Bill is presented for the assent of the President. It is salutary that the scope of the proviso is confined to the limits prescribed therein and is not construed so as to take away the power in the main part of article 368(2). An amendment which otherwise fulfils the requirement of article 368(2) and is outside the specified cases which require ratification cannot be denied legitimacy on the ground

alone of the company it keeps. The main part of article 368 (2) directs that when a Bill which has been passed by the requisite special majority by both the Houses has received the assent of the President "the Constitution shall stand amended in accordance with the terms of the Bill". The provision cannot have the effect of interdicting this constitutional declaration and mandate to mean that in a case where the proviso has not been complied — even the amendments which do not fall within the ambit of the proviso also become abortive. The words "the amendment shall also require to be ratified by the legislature" indicate that what is required to by ratified by the legislatures of the States is the amendment seeking to make the change in the provisions referred to in clauses (a) to (c) of the proviso. The need for and the requirement of the ratification is confined to that particular amendment alone and not in respect of amendments outside the ambit of the proviso. The proviso can have, therefore, no bearing on the validity of the amendments which do not fall within its ambit

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

A similar situation can arise in the context of the main part of article 368 (2) which provides: 'when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President.' Here also a condition is imposed that the Bill shall be presented to the President for his assent only after it has been passed in each House by the prescribed special majority. An amendment in the First and Fourth Schedules referable to article 4 can be introduced by Parliament by an ordinary law passed by simple majority. There may be a Bill which may contain amendments made in the First and Fourth Schedules as well as amendments in other provisions of

the Constitution excluding those referred to in the proviso which can be amended only by a special majority under article 368 (2) and the Bill after having been passed only by an ordinary majority instead of a special majority has received the assent of the President. The amendments which are made in the First and Fourth Schedules by the said amendment Act were validly made in view of article 4 but the amendments in other provisions were in disregard to article 368 (2) which requires a special majority. Is not the doctrine of severability applicable to such an amendment so that amendments made in the First and Fourth Schedules may be upheld while declaring the amendments in the other provisions as ineffective? A contrary view excluding the doctrine of severability would result in elevating a procedural limitation on the amending power to a level higher than the substantive limitations...

In Ceylon, in *Bribery Commissioner vs Pedrick Rana Singhe 1965* AC 172 it was found that section 41 of the Bribery Amendment Act, 1958 made a provision for appointment of a panel by the Governor-General on the advice of the Minister of Justice for selecting members of the Bribery Tribunal while section 55 of the Constitution vested the appointment, transfer, dismissal and disciplinary control of judicial officers in the Judicial Service Commission. It was held that the legislature had purported to pass a law which, being in conflict with Section 55 of the Order in Council, must be treated, if it is to be valid, as an implied alteration of the constitutional provisions about the appointment of judicial officers and could only be made by laws which comply with the special legislative procedure laid down in section 29 (4). Since there was nothing to show that the Bribery Amendment Act was passed by the necessary two-thirds majority, it was held that 'any Bill which does not comply with the condition precedent of the proviso, is and remains, even though it receives the Royal Assent, invalid and *ultra vires*'. Applying the doctrine of severability the judicial Committee, however, struck down the offending provision, *i.e.* section 41 alone. In other words passing of the Bill by a special majority was the condition precedent for presentation of the Bill for the assent. Disregard of such a condition precedent for presenting a Bill for assent did not result in the entire enactment being vitiated and the law being declared invalid in its entirety but it only had the effect of invalidation of a particular provision which offended against the limitation of the amending power. A comparison of the language used in clause (4) of section 29 with that of article 368 (2) would show that both the provisions bear a general similarity of purpose and both the provisions require the passing of the Bill by special majority before it was

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

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

We accordingly hold on contentions 'C' and 'D':

That there is nothing in the said proviso to article 368 (2) which detracts from the severability of a provision on account of the inclusion of which the Bill containing the Amendment requires ratification from the rest of the provisions of such Bill which do not attract and require such ratification. Having regard to the mandatory language of article 368 (2) that "thereupon the Constitution shall stand amended" the operation of the provisions should not be extended to constitutional amendments in a Bill which can stand by themselves without such ratification.

That, accordingly, the Constitution (Fifty-second Amendment) Act, 1985, in so far as it seeks to introduce the Tenth Schedule in the Constitution of India, to the extent of its provisions which are amenable to the legal sovereign of the amending process of the Union Parliament cannot be overborne by the proviso which cannot operate in that area. There is no justification for the view that even the rest of the provisions of the Constitution (Fifty-second Amendment) Act 1985, excluding paragraph 7 of the Tenth Schedule become constitutionally infirm by reason alone of the fact that one of its severable provisions which attracted and required ratification under the proviso to article 368 (2) was not so ratified.

That paragraph 7 of the Tenth Schedule contains a provision which is independent of, and stand apart from, the main provisions of the Tenth Schedule which are intended to provide a remedy for the evil of unprincipled and unethical political defections and, therefore, is a severable part. The remaining provisions of the Tenth Schedule can and do stand independently of paragraph 7 and are complete in themselves workable and are not truncated by the excision of paragraph 7."

(xxvii) "Re: Contentions 'E' and 'F' :

These two contentions have certain overlapping areas between them and admit of being dealt with together. Paragraph 6 (1) of the Tenth Schedule seeks to impart a statutory finality to the decision of the Speaker or the Chairman. The argument is that, this concept of 'finality' by itself, excludes Courts' jurisdiction. Does the word "final" render the decision of Speaker immune from Judicial Review? It is now well accepted that a finality clause is not a legislative magical incantation which has that effect of telling off judicial review. Statutory finality of a decision presupposes and is subject to its

consonance with the statute..."

(xxviii) "If the intendment is to exclude the jurisdiction of the superior Courts, the language would quite obviously have been different. Even so, where such exclusion is sought to be effected by an amendment the further question whether such an amendment would be destructive of a basic feature of the Constitution would arise. But comparison of the language in article 363(1) would bring out in contrast the kind of language that may be necessary to achieve any such purpose."

In Brundaban Nayak v. Election Commission of India, (1965) 3 SCR 53: (AIR 1965 SC1892), in spite of finality attached by article 192 to the decision of the Governor in respect of disqualification incurred by a member of a State Legislature subsequent to the election, the matter was examined by this Court on an appeal by special leave under article 136 of the Constitution against the decision of the High Court dismissing the writ petition filed under article 226 of the Constitution. Similarly in *Union of India v. Jyoti Prakash Mitter, (1971) 3 SCR 483 : (AIR 1971 SC 1093),* in spite of finality attached to the order of the President with regard to the determination of age of a Judge of the High Court under article 217 (3) of the Constitution, this Court examined the legality of the order passed by the President during the pendency of an appeal filed under article 136 of the Constitution.

There is authority against the acceptability of the argument that the word "final" occurring in paragraph 6(1) has the effect of excluding the jurisdiction of the Courts in articles 136, 226 and 227."

(xxix) "The cognate questions are whether a dispute of the kind envisaged by paragraph 6 of the Tenth Schedule is in a non-justiciable area and that, at all events, the fiction in paragraph 6(2) that all proceedings under paragraph 6(1) of the Tenth Schedule be deemed to be "proceedings in Parliament" or "Proceedings in the Legislature of a State" attracts immunity from the scrutiny by Courts as under article 122 or 212, as the case may be.

Implicit in the first of these postulates is the premise that question of disqualification of members of the House are essentially matters pertaining to the constitution of the House and, therefore, the Legislature is entitled to exert its exclusive power to the exclusion of the judicial power. This assumption is based on certain British legislature practices of the past in an area which is an

impalpable congeries of legal rules and conventions peculiar to and characteristic of British Parliamentary traditions. Indeed, the idea appears to have started with the proposition that the constitution of the House was itself a matter of privilege of the House."

(xxx) "Indeed, in dealing with the disqualifications and the resolution of disputes relating to them under articles 191 and 192 or articles 102 and 103, as the case may be, the Constitution has evinced a clear intention to resolve electoral-disputes by resort to the judicial power of the State. Indeed, Justice Khanna in Indira Nehru Gandhi's case (1976 (2) SCR 347: AIR 1975 SC 2299) said:

> Not much argument is needed to show that unless there be a machinery for resolving an election dispute and for going into the allegations that elections were not free and fair being vitiated by malpractices, the provision that a candidate should not resort to malpractices would be in the nature of a mere pious wish without any legal sanction. It is further plain that if the validity of the election declared to be valid only if we provide a forum for going into those grounds and prescribe a law for adjudicating upon those grounds....' (*See* page 468 (of SCR) : (at p. 2350 of AIR))

It is, therefore, inappropriate to claim that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule is not a judicial power and is within the non-justiciable legislative area...

In the present case, the power to decide disputed disqualification under paragraph 6(1) is pre-eminently of a judicial complexion".

(xxxi) "The fiction in paragraph 6(2), indeed, places it in the first clause of article 122 or 212, as the case may be. The words "proceedings in Parliament" or "proceedings in the legislature of a State " in paragraph 6(2) have their corresponding expression in articles 122(1) and 212(1) respectively. This attracts an immunity from mere irregularities of procedures.

That apart, even after 1986 when the Tenth Schedule was introduced, the Constitution did not evince any intention to invoke articles 122 or 212 in the conduct of resolution of disputes as to the disqualification of members under articles 191(1) and 102(1). The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. The decision under paragraph

6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under paragraph 6(1) of the Tenth Schedule."

(xxxii) "But then is the Speaker or the Chairman acting under paragraph 6(1) a Tribunal ? "All tribunals are not Courts, Though all Courts are Tribunals." The word "Courts "is used to designate those Tribunals which are set up in an organised State for the administration of justice. By administration of justice is meant the exercise of judicial power of the State to maintain and uphold rights and to punish "wrongs". Whenever there is an infringement of a right or an injury, Courts are there to restore the *vinculum juris* which is disturbed..."

(xxxiii) "In the operative conclusions we pronounced on 12 November 1991, we indicated in clauses G and H therein that judicial review in the area is limited in the manner indicated. If the adjudicatory authority is a tribunal, as indeed we have held it to be, why, then, should its scope be so limited? The finality clause in paragraph 6 does not completely exclude the jurisdiction of the Courts under articles 136, 226 and 227 of the Constitution. But it does have the effect of limiting the scope of the jurisdiction. The principle that is applied by the Courts is that in spite of a finality clause it is open to the Courts to examine whether the action of the authority under challenge is *ultra vires* the powers conferred on the said authority. Such an action can be *ultra vires* for the reason that it is in contravention of a mandatory provisions of the law conferring on the authority the power to take such an action. It will also be *ultra vires* the powers conferred on the authority if it is vitiated by *mala fides* or is colourable exercise of power based on extraneous and irrelevant considerations. While exercising their *certiorari* jurisdiction, the Courts have applied the test whether the impugned action falls within the jurisdiction of the authority taking the action or it falls outside such jurisdiction. An ouster clause confines judicial review in respect of actions falling outside the jurisdiction of the authority taking such action but precludes challenge to such action on the ground of an error committed in the exercise of jurisdiction

vested in the authority because such an action cannot be said to be an action without jurisdiction. An ouster clause attaching finality to a determination, therefore, does oust *certiorari* to some extent and it will be effective in ousting the power of the Court to review the decision of an inferior tribunal by *certiorari* if the inferior tribunal has not acted without jurisdiction and has merely made an error of law which does not effect its jurisdiction and if its decision is not a nullity for some reason such as breach of rule of natural justice... "In the light of the decisions referred to above and the nature of function that is exercised by the Speaker / Chairman under paragraph 6, the scope of judicial review under articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/ Chairman under paragraph 6 would be confined to jurisdictional errors only *viz.*, infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity.

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

(xxxiv) "In the result, we hold on contentions 'E' and 'F' :

That the Tenth Schedule does not, in providing for an additional grant for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

That paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speaker / Chairman is valid.

But the concept of statutory finality embodied in paragraph 6(1) does not detract from or abrogate judicial review under articles 136, 226 and 227 of the Constitution insofar as infirmities based on violations of constitutional mandates, *mala fides*, non- compliance with rules of natural justice and perversity are concerned.

That the deeming provision in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh's Case (Spl. Ref. No. 1, (1965) 1 SCR 413 :(AIR 1965 SC 745) to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of fiction accordingly.

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

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

(xxxv) "Re: Contention 'G':

The argument is that an independent adjudicatory machinery for resolution of electoral disputes is an essential incident of democracy, which is a basic feature of Indian constitutionalism. It is urged that investiture of the power of resolving such disputes in the Speaker or the Chairman does not answer this test of an independent, impartial quality of the adjudicatory machinery. It is, therefore, urged that paragraph 6(1) of the Tenth Schedule is violative of a basic feature.

It is also urged that a Speaker, under the Indian Parliamentary

tradition is not required to resign his membership of the political party on whose strength he gets elected and that inevitably the decision of the Speaker is not free from the tugs and pulls of political polarisations. It is urged that the Speaker who has not resigned his membership of the political party cannot be impartial and, at all events, his functioning will not be free from reasonable likelihood of bias."

(xxxvi) "The Tenth Schedule breaks away from the constitutional pattern for resolution of disqualifications envisaged in articles 103 and 192 of the Constitution which vest jurisdiction in this behalf in the President or the Governor acting according to the opinion of Election Commission. The disqualifications for defection could very well have been included in article 102(1) or 191(1) as a ground, additional to the already existing grounds under clauses (a) to (e) in which event, the same dispute resolution machinery would have dealt with the disqualifications for defections also. But the Tenth Schedule, apparently, attempted a different experiment in respect of this particular ground of disqualification."

(xxxvii) "The question is, whether the investiture of the determinative jurisdiction in the Speaker would by itself stand vitiated as denying the idea of an independent adjudicatory authority. We are afraid the criticism that the provision incurs the vice of unconstitutionality ignores the high status and importance of the Office of the Speaker in a parliamentary democracy. The Office of the Speaker is held in the highest respect and esteem in parliamentary traditions. The evolution of the institution of parliamentary democracy has as its pivot the institution of the Speaker. 'The Speaker holds a high, important and ceremonial office. All questions of the well being of the House are matters of Speaker's concern'. The Speaker is said to be the very embodiment of propriety and impartiality. He performs wide ranging functions including the performance of important functions of a judicial character..."

(xxxviii) "It would, indeed, be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged

their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the man inside."

(xxxix) "Accordingly, we hold that the vesting of adjudicatory functions in the Speakers / Chairmen would not by itself vitiate the provision on the ground of likelihood of political bias is unsound and is rejected. The Speakers / Chairmen hold a pivotal position in the scheme of parliamentary democracy and are guardians of the rights and privileges of the House. They are expected to and do take far reaching decisions in the functioning of parliamentary democracy. Vestiture of power of (to) adjudicate questions under the Tenth Schedule in such a constitutional functionaries should not be considered exceptionable."

(xl) "Re: contention 'H' :

In the view we take of the validity of paragraph 7, it is unnecessary to pronounce on the contention whether judicial review is a basic feature of the Constitution and paragraph 7 of the Tenth Schedule violates such basic structure."

(xli) "We may now notice one other contention as to the construction of the expression 'any direction' occurring in paragraph 2(1)(b). It is argued that if the expression really attracts within its sweep every direction or whip of any kind whatsoever it might be unduly restrictive of the freedom of speech and the right of dissent and that, therefore, should be given a meaning limited to the objects and purposes of the Tenth Schedule...

The reasoning of the learned Judge that a wider meaning of the words "any direction" would 'cost it its constitutionality' does not commend to us. But we approve the conclusion that these words require to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. Those objects and purposes define and limit the contours of its meaning. The assignment of a limited meaning is not to read it down to promote its constitutionality but because such a construction is a harmonious construction in the context. There is no justification to give the words the wider meaning. While construing paragraph 2(1)(b) it cannot be ignored that under the Constitution members of Parliament as well as of the State

Legislature enjoy freedom of speech in the House though this freedom is subject to the provisions of the Constitution and the rules and standing orders regulating the Procedure of the House [article 105(1) and article 194(1)]. The disqualification imposed by paragraph 2(1)(b) must be so construed as not to unduly impinge on the said freedom of speech of a member. This would be possible if paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of Government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which the member belongs went to the polls. For this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(1)(b), would have to be limited to a vote on Motion of Confidence or No-confidence in the Government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate.

Keeping in view the consequences of the disqualification *i.e.*, termination of the membership of a House, it would be appropriate that the direction or whip which results in such disqualification under paragraph 2(1)(b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining

from voting contrary to such a direction."

(xlii) "There are some submissions as to the exact import of a "split" - whether it is to be understood as instantaneous, one time event or whether a "split" can be said to occur over a period of time. The hypothetical poser was that if one-third of the members of a political party in the legislature broke-away from it on a particular day and a few more members joined the splinter group a couple of days later would the latter also be a part of the 'split' group. This question of construction cannot be in vacuum. In the present cases, we have dealt principally with constitutional issues. The meaning to be given to "split" must necessarily be examined in a case in which the question arises in the context of its particular facts. No hypothetical predications can or need be made. We, accordingly, leave this question open to be decided in an appropriate case."

(xliii) "Before parting with the case, we should advert to one other circumstance. During the interlocutory stage, the Constitution bench was persuaded to make certain interlocutory orders which, addressed as they were to the Speaker of the House, (though, in a different capacity as an adjudicatory forum under the Tenth Schedule) engendered complaints of disobedience culminating in the filing of petitions for initiation of proceedings of contempt against the Speaker. It was submitted that when the very question of jurisdiction of the Court to deal with the matter was raised and even before the constitutionality of paragraph 7 had been pronounced upon, self restraint required that no interlocutory orders in a sensitive area of the relationship between the Legislature and the Courts should have been made.

The purpose of interlocutory orders is to preserve in *status quo* the rights of the parties, so that, the proceedings do not become infructuous by any unilateral overt acts by one side or the other during its pendency. One of the contentions urged was as to the invalidity of the amendment for non-compliance with the proviso to article 368 (2) of the Constitution. It has now been unanimously held that paragraph 7 attracted the proviso to article 368(2). The interlocutory orders in this case were necessarily justified so that, no landslide changes were allowed to occur rendering the

proceedings ineffective and infructuous".

(xliv) "With the findings and observations as aforesaid W.P.No. 17 of 1991 is dismissed. Writ Petition in Rule No. 2421 of 1990 in the High Court of Guwahati is remitted back to the High Court for disposal in accordance with law and not inconsistent with the findings and observations contained in this order".

The Supreme Court in their minority judgment held as follows.

VERMA, J. (For himself and on behalf of L.M.Sharma,J.) (Minority view):-

(i) "This matter relating to disqualification on the ground of defection of some members of the Nagaland Legislative Assembly under the Tenth Schedule inserted by the Constitution (Fifty-second Amendment) Act, 1985, was heard along with some other similar matters relating to several Legislative Assemblies including those of Manipur, Meghalaya, Madhya Pradesh, Gujarat and Goa, since all of them involved the decision of certain constitutional questions relating to the Constitutional validity of para 7 of the Tenth Schedule and consequently the validity of the Constitution (Fifty-second Amendment) Act, 1985 itself. At the hearing, several learned counsel addressed us on account of which the hearing obviously took some time. Even during the course of the hearing, the actions of some Speakers tended to alter the *status quo*, in some cases resulting in irreversible consequences which could not be corrected in the event of para 7 of the Tenth Schedule being held invalid or the impugned orders of the Speakers being found justiciable and on merits illegal and , therefore, the urgency increased of deciding the questions debated before us at the earliest. For this reason, we indicated during the course of the hearing that we would pronounce our operative conclusions soon after conclusion of the hearing with reasons therefor to follow. Accordingly, on conclusion of the hearing on 1 November 1991, we indicated that the operative conclusions would be pronounced by us at the next sitting of the Bench when it assembled on 12 November 1991 after the Diwali vacation. The operative conclusions of the majority (Venkatachaliah, Reddy and Agarwal, JJ.) as well as of the minority (Lalit Mohan Sharma and J.S. Verma, JJ.) were thus pronounced on 12 November 1991. We are now indicating herein our reasons for the operative conclusions

of the minority view."

(ii) "The unanimous opinion according to the majority as well as the minority is that para 7 of the Tenth Schedule enacts a provision for complete exclusion of judicial review including the jurisdiction of the Supreme Court under article 136 and of the High Courts under articles 226 and 227 of the Constitution and, therefore, it makes in terms and in effect a change in articles 135, 226 and 227 of the Constitution which attracts the proviso to clause (2) of, article 368 of the Constitution; and, therefore, ratification by the specified number of State Legislatures before the Bill was presented to the President for his assent was necessary, in accordance therewith. The majority view is that in the absence of such ratification by the State Legislatures, it is para 7 alone of the Tenth Schedule which is unconstitutional; and it being severable from the remaining part of the Tenth Schedule, para 7 alone is liable to be struck down rendering the Speaker's decision under para 6 that of a judicial tribunal amenable to judicial review by the Supreme Court and the High Courts under articles 136, 226 and 227. The minority opinion is that the effect of invalidity of para 7 of the Tenth Schedule is to invalidate the entire Constitution (Fifty-second Amendment) Act, 1985 which inserted the Tenth Schedule since the President's assent to the Bill without prior ratification by the State Legislatures is *non est*. The minority view also is that para 7 is not severable from the remaining part of the Tenth Schedule and the Speaker not being an independent adjudicatory authority for this purpose as contemplated by a basic feature of democracy, the remaining part of the Tenth Schedule is in excess of the amending powers being violative of a basic feature of the Constitution. In the minority opinion, we have held that the entire Constitution (Fifty -second Amendment) Act, 1985 is unconstitutional and an abortive attempt to make the Constitutional Amendment indicated therein".

(iii) "It is unnecessary in this judgment to detail the facts giving rise to the debate on the constitutional issues relating to the validity of the Tenth Schedule, more particularly para 7 therein, introduced by the Constitution (Fifty-second Amendment) Act, 1985. Suffice it to say that these matters arise out of certain actions of the Speakers of

several Legislative Assemblies under the Tenth Schedule. Arguments on these questions were addressed to us by several learned Counsel, namely, the learned Attorney-General S/Shri A.K. Sen, Shanti Bhushan, M.C.Bhandare, F.S. Nariman, Soli J. Sorabjee, R.K. Garg, Kapil Sibal, M.R. Sharma, Ram Jethmalani, N.S. Hedge, O.P. Sharma, Bhim Singh and R.F. Nariman. It may be mentioned that some learned Counsel modified their initial stand to some extent as the hearing progressed by advancing alternative arguments as well. Accordingly, the several facets of each Constitutional issue debated before us were fully focussed during the hearing. The main debate, however, was on the construction of paras 6 and 7 of the Tenth Schedule and the validity of the Constitutional Amendment. Arguments were also addressed on the question of violation, if any, of any basic feature of the Constitution by the provisions of the Tenth Schedule".

(iv) " The Points involved in the decision of the Constitutional issues for the purpose of our opinion may be summarised broadly as under:-

(A) Construction of para 6 of the Tenth Schedule. Its effect and extent of exclusion of judicial review thereby.

(B) Construction of para 7 of the Tenth Schedule. Its effect and the extent of exclusion of judicial review thereby.

(C) In case of total exclusion of judicial review including the jurisdiction of Supreme Court under article 136 and the High Courts under articles 226 and 227 of the Constitution by the Tenth Schedule, does para 7 make a change in these articles attracting the proviso to clause (2) of article 368 of the Constitution?

(D) The effect of absence of prior ratification by the State Legislatures before the Bill making provisions for such amendment was presented to the President for assent, on the constitutional validity of the Tenth Schedule.

(E) Severability of para 7 from the remaining part of the Tenth Schedule and its effect on the question of constitutional validity of the Tenth Schedule.

(F) Violation of basic feature of the Constitution, if any, by the Tenth Schedule as a whole or any part thereof and its effect

on the constitutionality for this reason.

(G) Validity of the Tenth Schedule with reference to the right of dissent of members with particular reference to article 105".

(v) " As indicated by us in our operative conclusions pronounced earlier, we need not express our concluded opinion on the points argued before us which are not necessary for supporting the conclusion reached by us that the entire Tenth Schedule and consequently the Constitution (Fifty-second Amendment) Act, 1985 is unconstitutional on the view we have taken on the other points. We are, therefore, giving our reasons only in respect of the points decided by us leading to the conclusion we have reached".

(vi) "At this stage, it would be appropriate to mention the specific stand of the Speakers taken at the hearing. The learned Counsel who appeared for the several Speakers clearly stated that they were instructed to apprise us that the Speakers did not accept the jurisdiction of this Court to entertain these matters in view of the complete bar on jurisdiction of the courts enacted in para 7 read with para 6 of the Tenth Schedule. Accordingly, they abstained from addressing us on the merits of the impugned orders which led to these matters being brought in this Court in spite of our repeated invitation to them to also address us on merits in each case, which all the other learned Counsel did. No doubt, this Court's jurisdiction to decide the Constitutional validity of the Tenth Schedule was conceded, but no more".

(vii) "It is in these extraordinary circumstances that we had to hear these matters. We need not refer herein to the details of any particular case since the merits of each case are dealt separately in the order of that case. Suffice it to say that the unanimous view of the Bench is that the Speaker's decision disqualifying a member under the Tenth Schedule is not immune from judicial scrutiny. According to the majority it is subject to judicial scrutiny on the ground of illegality or perversity while in the minority view, it is a nullity liable to be so declared and ignored"...

(viii) " We consider it apposite in this context to recall the duty of the Court in such delicate situations.

(ix) "We would also like to observe that unlike England, where there is

no written Constitution and Parliament is supreme, in our country there is a written Constitution delineating the spheres of jurisdiction of the legislature and the judiciary whereunder the power to construe the meaning of the provisions in the Constitution and the laws is entrusted to the judiciary with finality attached to the decision of this Court *inter alia* by article 141 about the true meaning of any enacted provision and article 144 obliges all authorities in the country to act in aid of this Court. It is, therefore, not permissible in our constitutional scheme for any other authority to claim that power in exclusivity, or in supersession of this Court's verdict. Whatever be the controversy prior to this Court entertaining such a matter, it must end when the Court is seized of the matter for pronouncing its verdict and it is the constitutional obligation of every person and authority to accept its binding effect when the decision is rendered by this Court. It is also to be remembered that in our Constitutional scheme based on democratic principles which include governance by rule of law, every one has to act and perform his obligation according to the law of the land and it is the constitutional obligation of this Court to finally say what the law is. We have no doubt that the Speakers and all others sharing their views are alive to this Constitutional scheme, which is as much the source of their jurisdiction as it is of this Court and also conscious that the power given to each wing is for the performance of a public duty as a Constitutional obligation and not for self-aggrandisement. Once this perception is clear to all, there can be no room for any conflict".

(x) "The Tenth Schedule was inserted in the Constitution of India by the Constitution (Fifty-second Amendment) Act, 1985 which came into force with effect from 1 March 1985 and is popularly known as the Anti-defection Law. The Statement of Objects and Reasons says that this amendment in the Constitution was made to combat the evil of political defection which has become a matter of national concern and unless combated, is likely to undermine the very foundations of our democratic system and the principles which sustained it. This amendment is, therefore, for outlawing defection to sustain our democratic principles. The Tenth Schedule contains eight paras. Para 1 is the interpretation clause defining 'House' to mean either House of Parliament or the Legislative Assembly or,

as the case may be, either House of the Legislature of a State. The expressions 'legislature party' and 'original political party' which are used in the remaining paras are also defined. Para 2 provides for disqualification on ground of defection. Para 3 provides that disqualification on ground of defection is not to apply in case of split indicating therein the meaning of 'split'. Para 4 provides that disqualification on ground of defection is not to apply in the case of merger. Para 5 provides exemption for the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of the State, the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State from the applicability of the provisions of the Tenth Schedule. Para 8 contains the rule making power of the Chairman or the Speaker".

(xi) "We shall now deal with the points 'A' and 'B' — Paras 6 and 7 of Tenth Schedule.

In support of the objection raised to the jurisdiction of this Court and the justiciability of the Speaker's decision relating to disqualification of a member, it has been urged that sub-paragraph (1) of para 6 clearly lays down that the decision of the Chairman or, as the case may be, the Speaker of such House shall be final and sub-paragraph (2) proceeds to say that all proceedings under sub-paragraph (1) 'shall be deemed to be proceedings in Parliament .....,..... or, ... proceedings in the Legislature of a State, within the meaning of article 122 or article 212, as the case may be. It was urged that the clear provisions in para 6 that the decision of the Chairman/Speaker on the subject of disqualification under this Schedule shall be final and the further provision that all such proceedings 'shall be deemed to be proceeding in Parliament ..... or, ... proceedings in the Legislature of a State' within the meaning of article 122 or article 212, as the case may be clearly manifests the intention that the jurisdiction of all Courts including Supreme Court is ousted in such matters and the decision on this question is not justiciable. Further argument is that para 7 in clear words thereafter reiterates that position by saying that 'notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the

disqualification of a member of a House under this Schedule'. In other words, the argument is that para 6 by itself provides for ouster of the jurisdiction of all Courts including the Supreme Court and para 7 is a ramification of that clear intent in case of any doubt arising from para 6 alone. On this basis it was urged that the issue raised before us is not justiciable and the Speaker or the Chairman, as the case may be, not being 'Tribunal' within the meaning of that expression used in article 136 of the Constitution, their decision is not open to judicial review.

(xii) " In reply, it was urged that the finality clause in sub-paragraph (1) of para 6 does not exclude the jurisdiction of the High Courts under articles 226 and 227 and of this Court under article 136. Deeming provision in sub-paragraph(2) of para 6, it was urged, has the only effect of making it a 'proceedings in Parliament' or 'proceedings in the Legislature of a State' to bring it within the ambit of clause(1) of articles 122 or 212 but not within clause (2) of these articles. The expression 'proceedings in Parliament' and 'proceedings in the Legislature of the State' are used only in clause (1) of articles 122 or 212 but not in clause (2) of either of these articles, on account of which the scope of the fiction cannot be extended beyond the limitation implicit in the specific words used in the legal fiction. This being so, it was argued that immunity extended only to 'irregularity of procedure' but not to illegality as held in Keshav Singh (1965) 1 SCR 413 : (AIR 1965 SC 745). In respect of para 7, the reply is that the expression 'no Court' therein must be similarly construed to refer only to the Courts of ordinary jurisdiction but not the extraordinary jurisdiction of the High Courts under articles 226 and 227 and the plenary jurisdiction of Supreme Court under article 136. It was also argued that the Speaker/Chairman while deciding the question of disqualification of member under para 6 exercises a judicial function of the State which otherwise would be vested in the Courts and, therefore, in this capacity he acts as 'Tribunal' amenable to the jurisdiction under articles 136, 226 and 227 of the Constitution. Shri Sibal also contended that the bar in para 7 operates only at the interim stage, like other election disputes, and not after the final decision under para 6."

(xiii) "The finality clause in sub-paragraph (1) of para 6 which says that

the decision of the Chairman or, as the case may be, the Speaker of such House shall be final is not decisive. It is settled that such a finality clause in a statute by itself is not sufficient to exclude the jurisdiction of the High Courts under articles 226 and 227 and the Supreme Court under article 136 of the Constitution, the finality being for the statute alone. This is apart from the decision being vulnerable on the ground of nullity. Accordingly, sub-paragraph (1) alone is insufficient to exclude the extraordinary jurisdiction of the High Courts and the plenary jurisdiction of this Court. The legal fiction in sub-paragraph (2) of para 6 can only bring the proceedings under sub-paragraph (1) thereof within the ambit of clause (1) of article 122 or clause (1) of article 212, as the case may be, since the expressions used in sub-paragraph (2) of para 6 of the Tenth Schedule are 'shall be deemed to be proceeding in Parliament' or 'proceedings in the Legislature of a State', and such expressions find place both in articles 122 and 212 only in clause (1) and not clause (2) thereof. The ambit of the legal fiction must be confined to the limitation implicit in the words used for creating the fiction and it cannot be given an extended meaning to include therein something in addition. It is also settled that a matter falling within the ambit of clause(1) of either of these two articles is justiciable on the ground of illegality or perversity in spite of the immunity it enjoys to a challenge on the ground of 'irregularity of procedure'.

(xiv) "To overcome this result, it was argued that such matter would fall within the ambit of clause (2) of both articles 122 and 212 because the consequences of the order of disqualification by the Speaker/ Chairman would relate to the conduct of business of the House. In the first place, the two separate clauses in articles 122 and 212 clearly imply that the meaning and scope of the two cannot be identical even assuming there be some overlapping area between them. What is to be seen is the direct impact of the action and its true nature and not the further consequences flowing therefrom. It cannot be doubted in view of the clear language of sub-paragraph (2) of para 6 that it relates to clause (1) of both articles 122 and 212 and the legal fiction cannot, therefore, be extended beyond the limits of the express words used in the fiction. In construing the fiction, it is not to be extended beyond the language of the section

by which it is created and its meaning must be restricted by the plain words used. It cannot also be extended by importing another fiction. The fiction in para 6(2) is a limited one which serves its purpose by confining it to clause (1) alone of articles 122 and 212 and therefore, there is no occasion to enlarge its scope by reading into it words which are not there and extending it also to clause (2) of these articles. *(See Commissioner of Income-tax vs. Ajax Products Ltd., (1965) 1 SCR 700: (AIR 1965 SC 1358))".*

(xv) "Moreover, it does appear to us that the decision relating to disqualification of a member does not relate to regulating procedure or the conduct of business of the House provided for in clause (2) of articles 122 and 212 and taking that view would amount to extending the fiction beyond its language and importing another fiction for this purpose which is not permissible. This being so, the matter falls within the ambit of clause (1) only of article 122 and 212 as a result of which it would be vulnerable on the ground of illegality and perversity and therefore, justiciable to that extent."

(xvi) "It is, therefore, not possible to uphold the objection of jurisdiction on the finality clause or the legal fiction created in para 6 of the Tenth Schedule when justiciability of the clause is based on a ground of illegality or perversity. (See Keshav Singh, 1965) I SCR 413 : (AIR 1965 SC 745). This in our view is the true construction and effect of para 6 of the Tenth Schedule".

(xvii) " We shall now deal with para 7 of the Tenth Schedule".

(xviii) " The words in para 7 of the Tenth Schedule are undoubtedly very wide and ordinarily mean that this provision supersedes any other provision in the Constitution. This is clear from the use of the *non obstante* clause 'notwithstanding anything in this Constitution' as the opening words of para 7. The *non obstante* clause followed by the expression ' no court shall have any jurisdiction' leave no doubt that the bar of jurisdiction of courts contained in para 7 is complete excluding also the jurisdiction of the Supreme Court under article 136 and that of the High Courts under articles 226 and 227 of the Constitution relating to matters covered by para 7. The question, therefore, is of the scope of para 7. The scope of para 7 for this purpose is to be determined by the expression 'in respect of any matter connected with the disqualification of a member of a

House under this Schedule."

(xix) "One of the constructions suggested at the hearing was that this expression covers only the intermediate stage of the proceedings relating to disqualification under para 6 and not the end stage when the final order is made under para 6 on the question of disqualification. It was suggested that this construction would be in line with the construction made by this Court in its several decisions relating to exclusion of Courts' jurisdiction in election disputes at the intermediate stage under article 329 of the Constitution. This construction suggested of para 7 does not commend to us since it is contrary to the clear and unambiguous language of the provision. The expression 'in respect of any matter connected with the disqualification of a member of a House under this Schedule' is wide enough to include not merely the intermediate stage of the proceedings relating to disqualification but also the final order on the question of disqualification made under para 6 which is undoubtedly such a matter. There is thus express exclusion of all courts' jurisdiction even in respect of the final order".

(xx) "As earlier indicated by virtue of the finality clause and the deeming provision in para 6, there is exclusion of all courts' jurisdiction to a considerable extent leaving out only the area of justiciability on the ground of illegality or perversity which obviously is relatable only to the final order under para 6. This being so, enactment of para 7 was necessarily made to bar the jurisdiction of courts also in respect of matters falling outside the purview of the exclusion made by para 6. Para 7 by itself and more so when read along with para 6 of the Tenth Schedule, leaves no doubt that exclusion of all courts' jurisdiction by para 7 is total, leaving no area within the purview, even of the Supreme Court or the High Courts under articles 136, 226 and 227. The language of para 7 being explicit, no other aid to construction is needed. Moreover, the speech of the Law Minister who piloted the Bill in Lok Sabha and that of the Prime Minister in the Rajya Sabha as well as the debate on this subject clearly show that these provisions were enacted to keep the entire matter relating to disqualification, including the Speakers' final decision under para 6 on the question of disqualification, wholly outside the purview of all courts including the Supreme Court and the High Courts.

The legislative history in the absence of such a provision excluding the courts' jurisdiction in the two earlier Bills which lapsed also reinforces the conclusion that enactment of para 7 was clearly to provide for total ouster of all courts' jurisdiction".

(xxi) "In the face of this clear language, there is no rule of construction which permits the reading of para 7 in any different manner since there is no ambiguity in the language which is capable of only one construction namely, total exclusion of the jurisdiction of all courts including that of the Supreme Court and the High Courts under articles 136, 226 and 227 of the Constitution in respect of every matter connected with the disqualification of a member of a House under the Tenth Schedule including the final decision rendered by the Speaker/Chairman, as the case may be. Para 7 must, therefore, be read in this manner alone".

(xxii) "The question now is of the effect of enacting such a provision in the Tenth Schedule and the applicability of the proviso to clause (2) of article 368 of the Constitution."

(xxiii) Point 'C'-applicability of article 368(2) Proviso. The above construction of para 7 of the Tenth Schedule gives rise to the question whether it thereby makes a change in article 136 which is in Chapter IV of Part V and articles 226 and 227 which are in Chapter V of Part VI of the Constitution. If the effect of para 7 is to make such a change in these provisions so that the proviso to clause (2) of article 368 is attracted, then the further question which arises is of the effect on the Tenth Schedule of the absence of ratification by the specified number of State Legislatures, it being admitted that no such ratification of the Bill was made by any of the State Legislatures".

(xxiv) "*Prima facie* it would appear that para 7 does seek to make a change in articles 136, 226 and 227 of the Constitution inasmuch as without para 7 in the Tenth Schedule a decision of the Speaker/ Chairman would be amenable to the jurisdiction of the Supreme Court under article 136 and of the High Courts under articles 226 and 227 as in the case of decisions as to other disqualifications provided in clause (1) of article 102 or 191 by the President/ Governor under article 103 or 192 in accordance with the opinion of the Election Commission which was the Scheme under the two

earlier Bills which lapsed. However, some learned counsel contended placing reliance on *Sri Shankari Prasad Singh Deo v. Union of India, 1952 SCR 89 : (AIR 1951 SC 458) and Sajjan Singh v. State of Rajasthan, (1965) 1 SCR 933 : (AIR 1965 SC 845)* that the effect of such total exclusion of the jurisdiction of the Supreme Court and the High Courts does not make a change in articles 136, 226 and 227. A close reading of these decisions indicates that instead of supporting this contention, they do in fact negative it..."

(xxv) "The test applied was whether the impugned provisions inserted by the Constitutional Amendment did 'either in terms or in effect seek to make any change in article 226 or in articles 132 and 136'. Thus the change may be either in terms *i.e.* explicit or in effect in these articles to required ratification. The ground for rejection of the argument therein was that the remedy in the Courts remained unimpaired and unaffected by the change and the change was really by extinction of the right to seek the remedy. In other words, the change was in the right and not the remedy of approaching the Court since there was no occasion to invoke the remedy, the right itself being taken away. To the same effect is the decision in Sajjan Singh, (AIR 1965 SC 845), wherein Shankari Prasad. (AIR 1951 SC 458), was followed stating clearly that there was no justification for reconsidering Shankari Prasad".

(xxvi) "Distinction has to be drawn between abridgement or extinction of a right and restriction of the remedy for enforcement of the right. If there is an abridgement or extinction of the right which results in the disappearance of the cause of action which enables invoking the remedy and in the absence of which there is no occasion to make a grievance and invoke the subsisting remedy, then the change brought about is in the right and not the remedy. To this situation, Shankari Prasad and Sajjan Singh apply. On the other hand, if the right remains untouched so that a grievance based thereon can arise and, therefore, the cause of action subsists, but the remedy is curtailed or extinguished so that the cause of action cannot be enforced for want of that remedy, then the change made is in the remedy and not in the subsisting right. To this latter category, Shankari Prasad and Sajjan Singh have no application. This is clear

from the above-quoted passage in Sankari Prasad which clearly brings out this distinction between a change in the right and a change in the remedy".

(xxvii) "The present case, in unequivocal terms, is that of destroying the remedy by enacting para 7 in the Tenth Schedule making a total exclusion of judicial review including that by the Supreme Court under article 136 and the High Courts under articles 226 and 227 of the Constitution. But for para 7, which deals with the remedy and not the right, the jurisdiction of the Supreme Court under article 136 and that of the High Courts under articles 226 and 227 would remain unimpaired to challenge the decision under para 6, as in the case of decisions relating to other disqualifications specified in clause (1) of articles 102 and 191, which remedy continues to subsist. Thus, this extinction of the remedy alone without curtailing the right, since the question of disqualification of a member on the ground of defection under the Tenth Schedule does require adjudication on enacted principles, results in making a change in article 136 in Chapter IV in Part V and articles 226 and 227 in Chapter V in Part VI of the Constitution".

(xxviii) "On this conclusion, it is undisputed that the proviso to clause (2) of article 368 is attracted requiring ratification by the specified number of State Legislatures before presentation of the Bill seeking to make the Constitutional amendment to the President for his assent".

(xxix) "Point 'D' - Effect of absence of ratification ..... It is clause (2) with its proviso which is material. The main part of clause (2) prescribes that a constitutional amendment can be initiated only by the introduction of a Bill for the purpose and when the Bill is passed by each house by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President who shall give his assent to the Bill and thereupon the Constitution shall stand amended in accordance with the terms of the Bill. In short, the Bill on being passed by the required majority is presented to the President for his assent to the Bill and on giving of the assent, the Constitution stands amended accordingly. Then comes, the proviso which says that 'if such an amendment seeks to make

any change' in the specified provisions of the Constitution, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States by resolution to that effect passed by those Legislatures before the Bill making provisions for such amendments is presented to the President for assent. In other words, the proviso contains a constitutional limitation on the amending power; and prescribes as a part of the special procedure, prior assent of the State Legislatures before presentation of the Bill to the President for his assent in the case of such Bills. This is a condition interposed by the proviso in between the passing of the Bill by the requisite majority in each House and presentation of the Bill to the President for his assent, which assent results in the Constitution automatically standing amended in accordance with the terms of the Bill. Thus, the Bills governed by the proviso cannot be presented to the President for his assent without the prior ratification by the specified number of State Legislatures or in other words, such ratification is a part of the special procedure or a condition precedent to presentation of the Bill governed by the proviso to the President for his assent. It logically follows that the consequences of the Constitution standing amended in accordance with the terms of the Bill on assent by the President, which is the substantive part of article 368, results only when the Bill has been presented to the President for his assent in conformity with the special procedure after performance of the conditions precedent, namely, passing of the Bill by each House by the requisite majority in the case of all Bills; and in the case of Bills governed by the proviso, after the Bill has been passed by the requisite majority in each House and it has also been ratified by the Legislatures of not less than one-half of the States".

(xxx) "The constituent power for amending the Constitution conferred by article 368 also prescribes the mandatory procedure in clause (2) including its proviso, for its exercise. The constituent power cannot, therefore, be exercised in any other manner and non-compliance of the special procedure so prescribed in article 368(2) cannot bring about the result of the Constitution standing amended in accordance with the terms of the bill since that result ensues only at the end of the prescribed mandatory procedure and not otherwise. The

substantive part of article 368 which provides for the resultant amendment is the consequence of strict compliance of the mandatory special procedure prescribed for exercise of the constituent power and that result does not ensue except in the manner prescribed".

(xxxi) "The true nature and import of the amending power and procedure under article 368 as distinguished from the ordinary legislative procedure was indicated in Kesavananda Bharati Case".

(xxxii) "Apart from the unequivocal language of clause (2) including the proviso therein indicating the above result of prior ratification being a part of the special procedure or condition precedent for valid assent of the President, the same result is reached even by another route. The ordinary role of a proviso is to carve out an exception from the general rule in the main enacting part. The main enacting part of clause (2) lays down that on a Bill for a constitutional amendment being passed in each House by a requisite majority, it shall be presented to the President for his assent and on the assent being given, the Constitution shall stand amended in accordance with the terms of the Bill. The proviso then carves out the exception in case of Bills seeking to make any change in the specified articles of the Constitution prescribing that in the case of those Bills, prior ratification by the Legislatures of not less than one-half of the States is also required before the bill is presented to the President for his assent. This means that a Bill falling within the ambit of the proviso is carved out of the main enactment in clause (2) as an exception on account of which it cannot result in amendment of the Constitution on the President's assent without prior ratification by the specified number of State Legislatures. The proviso in clause (2) is enacted for and performs the function of a true proviso by qualifying the generality of the main enactment in clause (2) in providing an exception and taking out of the main enactment in clause (2) such Bills which but for the proviso would fall within the main part. Not only the language of the main enactment in clause (2) and the proviso thereunder is unequivocal to give this clear indication but the true role of a proviso, the form in which the requirement of prior ratification if such a Bill by the State Legislatures is enacted in article 368 lend further assurance that

this is the only construction of clause (2) with its proviso which can be legitimately made. If this be the correct construction of article 368(2) with the proviso as we think it is, then there is no escape from the logical conclusion that a Bill to which the proviso applies does not result in amending the Constitution in accordance with its terms on assent of the President if it was presented to the President for his assent and the President gave his assent to the Bill without prior ratification by the specified number of the State Legislatures. This is the situation in the present case".

(xxxiii) "Thus the requirement of prior ratification by the State Legislatures is not only a condition precedent forming part of the special mandatory procedure for exercise of the constituent power and a constitutional limitation thereon but also a requirement carving out an exception to the general rule of automatic amendment of the Constitution on the President's assent to the Bill".

(xxxiv) "In other words, clause (2) with the proviso therein itself lays down that the President's assent does not result in automatic amendment of the Constitution in case of such a Bill if it was not duly ratified before presentation to the President for his assent. Nothing more is needed to show that not only para 7 of the Tenth Schedule but the entire Constitution (Fifty-second Amendment) Act, 1985 is still born or an abortive attempt to amend the Constitution for want of prior ratification by the State Legislatures of the Bill before its presentation to the President for his assent".

(xxxv) "The result achieved in each case is the same irrespective of the route taken. If the route chosen is for construing the language of clause (2) with the proviso merely a part of it, the requirement or prior ratification is a condition precedent forming part of the special mandatory procedure providing that the constituent power in case of such a Bill can be exercised in this manner alone, the mode prescribed for other Bills being forbidden. If the route taken is of treating the proviso as carving out an exception from the general rule which is the normal role of a proviso, then the result is that the consequence of the Constitution standing amended in terms of the provisions of the Bills on the President's assent as laid down in the main part of clause (2) does not ensue without prior ratification in case of a Bill to which the proviso applies".

(xxxvi) "There can thus be no doubt that para 7 of the Tenth Schedule which seeks to make a change in article 136 which is a part of Chapter IV of Part V and articles 226 and 227 which form part of Chapter V of Part VI of the Constitution, has not been enacted by incorporation in a Bill seeking to make the Constitutional Amendment in the manner prescribed by clause(2) read with the proviso therein of article 368. Para 7 of the Tenth Schedule is, therefore, unconstitutional and to that extent at least the Constitution does not stand amended in accordance with the Bill seeking to make the Constitutional Amendment. The further question now is : its effect on the validity of the remaining part of the Tenth Schedule and consequently the Constitution (Fifty-second Amendment) Act, 1985 itself".

(xxxvii) "Point 'E' - Severability of para 7 of the Tenth Schedule.

The effect of absence of ratification indicated above suggests inapplicability of the doctrine of severability. In our opinion, it is not para 7 alone but the entire Tenth Schedule nay the Constitution (Fifty-second Amendment) Act, 1985 itself which is rendered unconstitutional being an abortive attempt to so amend the Constitution. It is the entire Bill and not merely para 7 of the Tenth Schedule therein which required prior ratification by the State Legislatures before its presentation to the President for his assent, it being a joint exercise by the Parliament and State Legislatures. The stage for presentation of Bill to the President for his assent not having reached, the President's assent was *non est* and it could not result in amendment of the Constitution in accordance with the terms of the bill for the reasons given earlier. Severance of para 7 of the Tenth Schedule could not be made for the purpose of ratification of the President's assent and, therefore, no such severance can be made even for the ensuing result. If the President's assent cannot validate para 7 in the absence of prior ratification, the same assent cannot be accepted to bring about a different result with regard to the remaining part of the Bill".

(xxxviii) "On this view, the question of applying the doctrine of severability to strike down para 7 alone retaining the remaining part of Tenth Schedule does not arise since it presupposes that the Constitution stood so amended on the President's assent. The doctrine does not

apply to a stillborn legislation".

(xxxix) "The doctrine of severability applies in a case where an otherwise validly enacted legislation contains a provision suffering from a defect of lack of legislative competence and the invalid provision is severable leaving the remaining valid provisions a viable whole. This doctrine has no application where the legislation is not validly enacted due to non-compliance of the mandatory legislative procedure such as the mandatory special procedure prescribed for exercise of the constituent power. It is not possible to infuse life in a stillborn by any miracle of deft surgery even though it may be possible to continue life by removing a congenitally defective part by surgical skill. Even the highest degree of surgical skill can help only continue life but it cannot infuse life in the case of a still-birth".

(xl) "With respect, the contrary view does not give due weight to the effect of a condition precedent forming part of the special procedure and the role of a proviso and results in rewriting the proviso to mean that ratification is not a condition precedent but merely an additional requirement of such a Bill to make that part effective. This also fouls with the expression 'Constitution shall stand amended ..' on the assent of President which is after the stage when the amendment has been made and ratified by the State Legislatures as provided. The historical background of drafting the proviso also indicates the significance attached to prior ratification as a condition precedent for valid exercise of the constituent power".

(xli) "We are unable to read the Privy Council decision in the *Bribery Commission vs. Pedrick Ranasinghe, 1965 AC 172,* as an authority to support applicability of the doctrine of severability in the present case. In Kesavananda Bharati, (1973 Supp SCR 1: AIR 1973 SC 1461, the substance of that decision was indicated by Mathew, J., at p. 778 of SCR : (at p. 1916 of AIR), thus :

"..... that though Ceylon Parliament has plenary power of ordinary legislation, in the exercise of its Constitution power it was subject to the special procedure laid down in S. 29(4) ....."

While Section 29(4) of Ceylon (Constitution) Order was entirely

procedural with no substantive part therein, article 368 of the Indian Constitution has also a substantive part as pointed out in Kesavananda Bharati. This distinction also has to be borne in mind".

(xlii) "The challenge in Ranasinghe was only to the legality of a conviction made under the Bribery Act, 1954 as amended by the Bribery Amendment Act, 1958 on the ground that the Tribunal which has made the conviction was constituted under section 41 of the Amending Act which was invalid being in conflict with Section 55 of the Constitution and not being enacted by exercise of constituent power in accordance with Section 29(4) of the Ceylon (Constitution) Order. The Supreme Court of Ceylon quashed the conviction holding section 41 of the Amending Act to be invalid for this reason. The Privy Council affirmed that view and in this context held that section 41 could be severed from the rest of the Amending Act. Ranasinghe was not a case of a Bill passed in exercise of the constituent power without following the special procedure of section 29(4) but of a Bill passed in exercise of the ordinary legislative power containing other provisions which could be so enacted, and including therein section 41 which could be made only in accordance with the special procedure of section 29(4) of the Constitution.

(xliii) The Birbery Amendment Act, 1958, in Ranasinghe, was enacted in exercise of the ordinary legislative power and therein was inserted Section 41 which could be made only in exercise of the constituent power according to the special procedure prescribed in Section 29(4) of the Ceylon (Constitution) Order. In this situation, only Section 41 of the Amending Act was held to be invalid and severed because the special procedure for the constituent power was required only for that provision and not the rest. In the instant case the entire Tenth Schedule is enacted in exercise of the constituent power under article 368, not merely para 7 therein, and this has been done without following the mandatory special procedure prescribed. It is, therefore, not a case of severing the invalid constituent part form the remaining ordinary legislation. Ranasinghe could have application if in an ordinary legislation outside the ambit of article 368, a provision which could be made only in exercise of the constituent power according to article 368 had been inserted without following the special procedure, and severance of the invalid

constituent part alone was the question. Ranasinghe is, therefore, distinguishable.

(xliv) "Apart from inapplicability of the doctrine of severability to a Bill to which the proviso to clause(2) of article 368 applies, for the reasons given, it does not apply in the present case to strike down para 7 alone retaining the remaining part of the Tenth Schedule. In the first place, the discipline for exercise of the constituent power was consciously and deliberately adopted instead of resorting to the mode of ordinary legislation in accordance with sub-clause (e) of clause (1) of articles 102 and 191, which would render the decision on the question of disqualification on the ground of defection also amenable to judicial review as in the case of decision on questions relating to other disqualifications. Moreover, even the test applicable for applying the doctrine of severability to ordinary legislation as summarised in *R.M.D. Chamarbaughwalla v. Union of India, 1957 SCR 930 : (AIR 1957 SC 628)* indicates that para 7 alone is not severable to permit retention of the remaining part of the Tenth Schedule as valid legislation. The settled test whether the enactment would have been made without para 7 indicates that the legislative intent was to make the enactment only with para 7 therein and not without it. This intention is manifest throughout and evident from the fact that but for para 7, the enactment did not require the discipline of article 368 and exercise of the constituent power. Para 7 follows para 6 the contents of which indicate the importance given to para 7 while enacting the Tenth Schedule. The entire exercise, as reiterated time and again in the debates, particularly in the speech of the Law Minister while piloting the Bill in the Lok Sabha and that of the Prime Minister in the Rajya Sabha, was to emphasis that total exclusion of judicial review of the Speaker's decision by all courts including the Supreme Court, was the prime object of enacting the Tenth Schedule. The entire legislative history shows this. How can the doctrine of severability be applied in such a situation to retain the Tenth Schedule striking down para 7 alone? This is a further reason for inapplicability of this doctrine.

(xlv) Point 'F' - Violation of basic features

The provisions in the Tenth Schedule minus para 7, assuming para

7 to be severable as held in the majority opinion, can be sustained only if they do not violate the basic structure of the Constitution or damage any of its basic features. This is settled by Kesavananda Bharati case. The question, therefore, is whether there is violation of any of the basic features of the Constitution by the remaining part of the Tenth Schedule, even assuming the absence of ratification in accordance with the proviso to clause (2) of article 368 results in invalidation of para 7 alone.

(xlvi) Democracy is a part of the basic structure of our Constitution; and rule of law, and free and fair elections are basic features of democracy. One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority. It is only by a fair adjudication of such disputes relating to validity of elections and subsequent disqualifications of members that true reflection of the electoral mandate and governance by rule of law essential for democracy can be ensured. In the democratic pattern adopted in our Constitution, not only the resolution of election dispute is entrusted to a judicial tribunal, but even the decision on question as to disqualification of members under articles 103 and 192 is by the President/Governor in accordance with the opinion of the Election Commission. The Constitutional scheme, therefore, for decision on questions as to disqualification of members after being duly elected, contemplates adjudication of such disputes by an independent authority outside the House, namely, President/Governor in accordance with the opinion of the Election Commission, all of whom are high constitutional functionaries with security of tenure, independent of the will of the House. Sub-clause (e) of clause (1) in articles 102 and 191 which provide for enactment of any law by the Parliament to prescribe any disqualification other than those prescribed in the sub-clauses of clause (1), clearly indicates that all disqualifications of members were contemplated within the scope of articles 102 and 191. Accordingly, all disqualifications including disqualification on the ground of defection, in our constitutional scheme, are different species of the same genus, namely, disqualification, and the constitutional scheme does not contemplate any difference in their basic traits and treatment. It is

undisputed that the disqualification on the ground of defection could as well have been prescribed by an ordinary law made by the Parliament under articles 102(1)(e), 191(1)(e) instead of by resort to the constituent power of enacting the Tenth Schedule. This itself indicates that all disqualifications of members according to the constitutional scheme were meant to be decided by an independent authority outside the House such as the President/Governor, in accordance with the opinion of another similar independent constitutional functionary, the Election Commission of India, who enjoys the security of tenure of a Supreme Court Judge with the same terms and conditions of office. Thus, for the purpose of entrusting the decision on the question of disqualification of a member, the constitutional scheme envisages an independent authority outside the House and not within it, which may be dependent on the pleasure of the majority in the House for its tenure.

(xlvii) The Speaker's office is undoubtedly high and has considerable aura with the attribute of impartiality. This aura of the office was even greater when the Constitution was framed and yet the framers of the Constitution did not choose to vest the authority of adjudicating disputes as to disqualification of members to the Speaker; and provision was made in articles 103 and 192 for decision of such disputes by the President/Governor in accordance with the opinion of the Election Commission. The reason is not far to seek.

(xlviii) The Speaker being an authority within the House and his tenure being dependent on the will of the majority therein, likelihood of suspicion of bias could not be ruled out. The question as to disqualification of a member has adjudicatory disposition and, therefore, requires the decision to be rendered in consonance with the scheme for adjudication of disputes. Rule of law has in it firmly entrenched, natural justice, of which, Rule against bias is a necessary concomitant; and basic postulates of rule against bias are: *Nemo Judex In Causa Sua*--- 'A Judge is disqualified from determining any case in which he may be, or may fairly be suspected to be, biased; and 'it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done'. This appears to be the underlying principle adopted by the framers of the Constitution in not designating the Speaker as the

authority to decide election disputes and questions as to disqualification of members under articles 103, 192 and 329 and opting for an independent authority outside the House. The framers of the Constitution had in this manner kept the office of the Speaker away from this controversy. There is nothing unusual in this scheme if we bear in mind that the final authority for removal of a Judge of the Supreme Court and High Court is outside the judiciary in the Parliament under article 124(4). On the same principle the authority to decide the question of disqualification of a member of Legislature is outside the House as envisaged by articles 103 and 192.

(xlix) In the Tenth Schedule, the Speaker is made not only the sole but the final arbiter of such dispute with no provision for any appeal or revision against the Speaker's decision to any independent outside authority. This departure in the Tenth Schedule is a reverse trend and violates a basic feature of the Constitution since the Speaker cannot be treated as an authority contemplated for being entrusted with this function by the basic postulates of the Constitution, notwithstanding the great dignity attached to that office with the attribute of impartiality.

(l) It is the Vice-President of India who is *ex-officio* Chairman of the Rajya Sabha and his position, being akin to that of the President of India, is different from that of the Speaker. Nothing said herein relating to the Office of the Speaker applies to the Chairman of the Rajya Sabha, that is, the Vice-President of India. However, the only authority named for the Lok Sabha and the Legislative Assemblies is the Speaker of the House and entrustment of this adjudicatory function fouls with the constitutional scheme and therefore, violates a basic feature of the Constitution. Remaining part of the Tenth Schedule also is rendered invalid notwithstanding the fact that this defect would not apply to the Rajya Sabha alone, whose Chairman is the Vice-President of India, since the Tenth Schedule becomes unworkable for the Lok Sabha and the State Legislatures. The statutory exception of doctrine of necessity has no application since designation of authority in the Tenth Schedule is made by choice while enacting the legislation instead of adopting the other available options.

(li) Since the conferment of authority is on the Speaker and the provision

cannot be sustained for the reason given, even without para 7, the entire Tenth Schedule is rendered invalid in the absence of any valid authority for decision of the dispute.

(lii) Thus, even if the entire Tenth Schedule cannot be held unconstitutional merely on the ground of absence of ratification of the Bill, assuming it is permissible to strike down para 7 alone, the remaining part of the Tenth Schedule is rendered unconstitutional also on account of violation of the aforesaid basic feature. Irrespective of the view on the question of effect of absence of ratification, the entire Tenth Schedule must be struck down as unconstitutional.

(liii) Point 'G' ------ Other Contentions

We have reached the conclusion that para 7 of the Tenth Schedule is unconstitutional; that the entire Tenth Schedule is constitutionally invalid in the absence of prior ratification in accordance with the proviso to clause(2) of article 368; that the doctrine of severability does not apply in the present case of a constitutional amendment which suffers from the defect of absence of ratification as required by the proviso to clause (2) of article 368; that the remaining part of the Tenth Schedule minus para 7 is also unconstitutional for violation of a basic feature of the Constitution; and that the entire Tenth Schedule is therefore, constitutionally invalid rendering the Constitution (Fifty-second Amendment) Act, 1985 stillborn and an abortive attempt to amend the Constitution. In view of this conclusion, it is not necessary for us to express our concluded opinion on the other grounds of challenge to the constitutional validity of the entire Tenth Schedule urged at the hearing on the basis of alleged violation of certain other basic features of the Constitution including the right of members based on article 105 of the Constitution.

(liv) These are our detailed reasons for the operative conclusions pronounced by us earlier on 12 November 1991.

Order accordingly

Supreme Court of India

*Dr. Kashinath G. Jhalmi and another Vs. Speaker, Goa Legislative Assembly and Others with Ramakant D. Khalap Vs. Speaker, Goa Legislative Assembly and Others And Churchill Alemao Vs. Speaker, Goa Legislative Assembly**

The Court held :

- *Writ petition in the nature of class action alleging usurpation of public office is maintainable so long as the alleged illegality continues — Hence where writ of quo warranto sought alleging continuation of disqualified person in the offices of Chief Minister and Ministers, writ petition cannot be dismissed merely on ground of laches — Motive or conduct of the petitioner can be relevant only for denying them cost.*
- *Speaker while functioning as a statutory authority under para 6 of the Tenth Schedule, has no power to review his decision on question as to disqualification of a member of a House on ground of defection — Such power is not inherent under the Tenth Schedule — Nor such power existed even up to 12 November 1991 when the decision in Kihota Hollohon was rendered as by virtue of that decision – Para 7 treated as non-existent from the very inception — Nor can any analogy be drawn from the power available to him as Speaker of the House.*

Facts of the case

Sarvashri Ravi S. Naik, Ratnakar M. Chopdekar and Sanjay Bandekar were elected members of the Goa Legislative Assembly in the elections in November 1989. On 25 January 1991, Shri Ravi S. Naik assumed the office of the Chief Minister of the State of Goa and he formed his Council of Ministers which included

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Sarvashri Chopdekar and Bandekar as Ministers. On the same day *i.e.* on 25 January 1991, Dr. Kashinath Jhalmi, also a member of the Legislative Assembly, presented a petition to the Speaker, Shri Surendra V. Sirsat seeking disqualification of Shri. Ravi S. Naik as a member of Legislative Assembly on the ground that he had voluntarily given up membership of his political party. On 15 February 1991, the Speaker Shri Surendra V. Sirsat passed an order under para 6 of the Tenth Schedule to the Constitution, disqualifying Shri Ravi Naik on the ground of disqualification.

On 16 February 1991, Shri Ravi Naik filed Writ Petition No. 48 at the Goa Bench of the Bombay High Court challenging the order of disqualification, made by the Speaker under the Tenth Schedule to the Constitution. On 18 February 1991, the High Court passed an interim order in that writ petition staying operation of the order of disqualification by the Speaker. During the pendency of this writ petition, Shri Simon Peter D'Souza was elected Deputy Speaker of the Legislative Assembly on 4 March 1991. Shri Surendra V. Sirsat was removed from the Office of Speaker and the Deputy Speaker. Shri Simon Peter D'Souza began functioning as the Speaker in place of Shri Surendra V. Sirsat.

On the same day *i.e.* on 4 March 1991, Shri Ravi S. Naik made an application to Shri Simon Peter D'Souza, the Deputy Speaker functioning as the Speaker of the Goa Legislative Assembly, for review of the order dated 14 February 1991, of his disqualification made by the Speaker, Shri Surendra V. Sirsat under the Tenth Schedule. On 8 March 1991, the acting Speaker Shri Simon Peter D'Souza made an order, setting aside the order dated 15 February 1991 made by the Speaker, Shri Surendra V. Sirsat disqualifying Shri Ravi Naik as a member of the Goa Legislative Assembly. Thereafter, Petition No. 48 of 1991 filed by Shri Ravi Naik challenging the order of disqualification made by the Speaker on 15 February 1991 was dismissed as not pressed by him, on 22 April 1991.

On 8 January 1992, Writ Petition No. 11 of 1992 was filed by Dr. Kashinath Jhalmi and Shri Ramakant Khalap challenging the order of review dated 8 March 1991 passed by the acting Speaker, *inter-alia* on the ground that the Speaker did not have any power to review the earlier order of disqualification made under the Tenth Schedule to the Constitution of India. The High Court by the order dated 4 February 1992 upheld the preliminary objection of Shri Ravi S. Naik that the writ petition filed months after the date of the impugned order, was liable to be dismissed at the admission stage on the ground of *laches*. This order, dismissing the writ petition for this reason alone was challenged in Civil Appeal No. 1094 of 1992.

After dismissal of the Writ Petition No. 11 of 1992, another member of the

Goa Assembly, Shri Churchill Alemao filed Writ Petition No.70 of 1992, also challenging the order of review dated 8 March 1991 made by the acting Speaker setting aside the earlier order dated 15 February 1991 made by the Speaker disqualifying Shri Ravi Naik on similar grounds. The High Court dismissed Writ Petition No.70 of 1992 at the admission stage, for the same reason, on the ground of *laches*. Shri Alemao filed appeal No. 1096 of 1992 in the Supreme Court against the order of the High Court dismissing Writ Petition No. 70 of 1992.

Earlier on 10 December 1990, Shri Ramakant D. Khalap applied to Speaker, Shri Surendra V. Sirsat seeking disqualification of Shri Sanjay Bandekar and Shri Ratnakar Chopdekar as members of the Goa Legislative Assembly for defection under the Tenth Schedule . On 11 December 1990, Speaker served notices on these members. On 13 December 1990 Shri Bandekar and Shri Chopdekar filed Writ Petition No. 321 of 1990 at the Goa Bench of the Bombay High Court challenging the show cause notices issued to them by the Speaker. On the same day *i.e.* on 13 December 1990, the Speaker, Shri Surendra V. Sirsat made the orders disqualifying Shri Bandekar and Shri Chopdekar as members of the Assembly under the Tenth Schedule. On 14 December 1990, Writ Petition No.321 of 1990 was amended to challenge the orders of disqualification dated 14 December 1990 and made by the Speaker against Shri Bandekar and Shri Chopdekar. The writ petition was admitted by the High Court, and an *interim order* was passed staying the orders of disqualification dated 13 December 1990 made by the Speaker. The Writ Petition No. 321 of 1990 by Shri Bandekar and Chopdekar was pending in the High Court with the interim order made therein subsisting, at the time of appeals made to the Supreme Court.

In the meantime, in a manner similar to that in the case of Shri Ravi Naik, the Deputy Speaker functioning as the Speaker, on applications made to him for the purpose, passed orders on 7 March 1991, whereby the order dated 13 December made by the Speaker disqualifying Shri Bandekar and Shri Chopdekar under the Tenth Schedule was set aside. This led to the filing of Writ Petition No. 8 of 1992 by Shri Ramakant D. Khalap on 7 January 1992 at the Goa Bench of the Bombay High Court, challenging the order of review dated 7 March 1991 passed by the acting Speaker. This writ petition was similarly dismissed on the ground of *laches* on 4 February 1992. Civil Appeal No. 1095 of 1992 was therefore, filed against dismissal of Writ Petition No. 8 of 1992.

In the Civil Appeal Nos. 1094 of 1992, 1095 of 1992 and 1096 of 1992 filed by Dr. Kashinath G. Jhalmi, Shri Ramakant D. Khalap and Shri Chruchill Alemao, substantially similar arguments were advanced to contend that dismissal of the writ

petitions by the High Court on the ground of *laches* was unsupportable. In the present context, challenge to the order of review made by the Speaker under the Tenth Schedule was on the ground of nullity, and it was prayed that since the Speaker had no power of review under Tenth Schedule and the order of review being nullity, it must be so declared.

8. The two main questions which arose for decision in these appeals before the Supreme Court were:

(1) *Laches* - Are the impugned orders of the High Court dismissing the writ petitions merely on the ground of *laches* susceptible to interference under article 136 of the Constitution in the instant case; and

(2) *Power of review* - If so, does the Speaker, acting as the authority under the Tenth Schedule to the Constitution, have no power of review, so that any order made by him in purported exercise of the power of review is a nullity?

Decision/Judgment of the Court

9. The Supreme Court delivered the following judgment in the matter on 31 March 1993:

(i) "The High Court has taken the view that the impugned orders of the review having been made by the Acting Speaker on March 7 and 8, 1991, the writ petitions challenging them filed on 7 January 1992 8 January 1992 and 10 February 1992 were highly belated and, therefore, liable to be dismissed merely on the ground of laches. It is for this reason that they were dismissed at the admission stage itself, sustaining the preliminary objection taken on this ground by Ravi S. Naik, Chopdekar and Bandekar, in whose favour the orders of review had been made. The High Court has referred to certain decisions of this Court for applying the doctrine of *laches*, and declined to consider the merits of the main point raised in the writ petitions, that the Speaker does not have any power of review acting under the Tenth Schedule. The High Court has also held as untenable, the explanation given by the writ petitioners that uncertainty of the law settled only by the decision of this Court in *Kihota Hollohon* rendered on 12 November 1991 was the reason for not filing those writ petitions earlier. Learned counsel for the appellants have assailed application of the doctrine of *laches* in the present situation, and also contended that if any explanation was needed for the intervening period, pendency of the question of constitutional validity of Tenth Schedule itself in this Court was sufficient

to explain the period up to the date of that decision, and the writ petitions were filed soon thereafter. It was also submitted by learned counsel for the appellants, that the continuance in office of disqualified persons, even now, provides recurring cause of action, since the continuance in office without lawful authority of these persons, one of whom is the Chief Minister of the State of Goa, is against public policy and good administration. It was submitted, the Court cannot decline to examine the validity of the authority under which they continue to hold office. On this basis it was urged that the mere delay, if any, in challenging the legality of the authority under which these three persons continue to hold office, after being disqualified as members of the Assembly, could not be a valid justification for the High Court to refuse to examine the main question of existence of power of review in the Speaker acting under the Tenth Schedule, since the discretion of the High Court under article 226 of the Constitution must be exercised judicially, so as not to permit perpetuation of an illegality. Shri Jethmalani also submitted, that the doctrine of *laches* does not apply where declaration sought is of nullity, in order to prevent its continuing operation, and *laches* is not relevant in the domain of public law relating to public office, where the purpose is to prevent a usurper from continuing to hold a public office". ..

(ii) "In the present case the claim is for the issue of a writ of *quo warranto* on the ground that Ravi S. Naik, Chopdekar and Bandekar are holding public offices, having suffered disqualification as members of the Assembly subsequent to their election, and of them, Ravi S. Naik continues to hold the high public office of Chief Minister of Goa. The relief claimed in the present case is not the conferment of a personal benefit to the petitioners, but for cessation of the usurpation of pubic offices held by these persons, if the contention of the petitioners be right that orders of review setting aside the earlier orders of disqualification made by the Speaker under the Tenth Schedule are nullity."

(iii) "Learned counsel for the respondents were unable to dispute, that any other member of the public to whom the oblique motives and conduct alleged against the appellants in the present case could not be attributed, could file such a writ petition even now for the same relief, since the alleged usurpation of the office is continuing, and this disability on the ground of oblique motives and conduct would not attach to him. This

being so, the relief claimed by the appellants in their writ petitions filed in the High Court being in the nature of a class action, without seeking any relief personal to them, should not have been dismissed merely on the ground of *laches*. The motive or conduct of the appellants, as alleged by the respondents, in such a situation can be relevant only for denying them the costs even if their claim succeeds, but it cannot be a justification to refuse to examine the merits of the question raised therein, since that is a matter of public concern and relates to the good governance of the State itself."

(iv) "Shri R.K. Garg submitted that *laches* of the appellants cannot legitimise usurpation of office by Ravi S. Naik, Chopdekar and Bandekar; and Shri Jethmalani submitted that manifest illegality will not be sustained solely on the ground of laches when it results in continuance in a public office of a person without lawful authority. The fact that the situation continues unaltered, since these persons continue to hold the public offices, to which they are alleged to be disentitled, is in our opinion sufficient to hold that the writ petitions ought not to have been dismissed merely on the ground of *laches* at the admission stage, without examining the contention on merits that these offices including that of the Chief Minister of the State, are being held by persons without any lawful authority. The dismissal of the writ petitions by the High Court merely on this ground cannot, therefore, be sustained.

(v) "The further question now is of the availability of power of review in the Speaker under the Tenth Schedule."

Power of review:

(vi) "The challenge to the orders dated 7 and 8 March 1991 made by the acting Speaker under the purported exercise of power of review setting aside the earlier orders of the Speaker disqualifying Ravi S. Naik, Chopdekar and Bandekar under the Tenth Schedule, is made by the appellants on the ground that the Speaker does not have any power of review under the Tenth Schedule. It was stated in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* thus: (SCC p. 845, para 4).

> "It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication."

(vii) "This position is not disputed before us. Admittedly, there is no express provision conferring the power of review on the Speaker in the Tenth Schedule. The only question therefore, is whether the Speaker acting as the authority under the Tenth Schedule has the power of review by necessary implication, empowering him to set aside the earlier order of disqualification made by him on merits."

(viii) "On behalf of the appellants it was contended that such a power of review in the Speaker cannot be implied from the provisions in the Tenth Schedule, and the only remedy available to the aggrieved member is by judicial review of the order of disqualification. In reply it was contended on behalf of the respondents, that the power of review inheres in the Speaker under the Tenth Schedule, in view of the finality attaching to the order made under para 6 of the Tenth Schedule. It was submitted that this inherent power of review in the Speaker must be read in the Tenth Schedule, at least up to 12 November 1991 when the judgment in Kihota Hollohon was rendered declaring the availability of judicial review against the Speaker's order of disqualification made under para 6 of the Tenth Schedule. It was further submitted by learned counsel for the respondents, that only a limited judicial review being available against the Speaker's order of disqualification, as held by the majority in Kihota Hollohon some power of review inheres in the Speaker even thereafter to correct palpable errors falling outside the limited scope of judicial review. It was then submitted, that the defects in the orders of disqualification made by the Speaker in the present case, which were corrected by review, were such defects which come within the ambit of the limited power of review available to the Speaker in addition to availability of judicial review as declared in Kihota Hollohon. Both sides referred to the merits of the orders of disqualification made by the Speaker but we refrain from adverting to this aspect as indicated earlier, in view of the conclusion reached by us that the Speaker has no power of review under the Tenth Schedule, and an order of disqualification made by him under para 6 is subject to correction only by judicial review as held in Kihota Hollohon. Accordingly, the alleged defects would require examination by judicial review in the writ petitions filed in the High Court challenging the orders of disqualification."

(ix) "Shri Nariman contended that the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his otherwise

plenary jurisdiction to decide the question of disqualification. He submitted that according to the majority in Kihota Hollohon only 'limited scope of judicial review' is available, and therefore, the power of review inheres in the Speaker to review his own orders on grounds analogous to those in Order 47, Rule 1, Code of Civil Procedure... Another limb of Shri Nariman's submission is that the majority opinion in Kihota Hollohon does not declare para 7 of the Tenth Schedule to be unconstitutional from the inception, and article 13 having no application to a constitutional amendment, the existence of para 7 in the Tenth Schedule till the judgment was rendered in Kihota Hollohon on 12 November 1991 must be accepted, and the provisions in the Tenth Schedule, including para 7 therein, must be examined for determining the implied power of review in the Speaker till 12 November 1991. On this basis, it was submitted that the finality declared in para 6 of the Tenth Schedule coupled with the ouster of judicial review in para 7 reinforces existence of the implied power of review in the Speaker at least till 12 November 1991, prior to which the impugned orders of review were made in the present case. A further submission made by Shri Nariman was that by virtue of para 6(2) read with para 8 of the Tenth Schedule, the general rules of procedure as well as Rule 7(7) of the Members of the Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986 applied, under which the Speaker ordinarily has the power of review. In this connection, reference was made particularly to Rule 77 of the Rules of Procedure and Conduct of Business of the Goa Legislative Assembly, regarding breach of privilege which enables the Speaker to reconsider his earlier decision and Rule 7(7) of the Members of the Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, relating to the procedure. It was submitted that these general rules relating to Speaker's power while dealing with a breach of privilege can be read to confer an express power of review.

(x) The last limb of Shri Nariman's contention may be disposed of at the outset. There is no scope for reading into the Tenth Schedule any of the powers of the Speaker which he otherwise has while functioning as the Speaker in the House, to clothe him with any such power in his capacity as the statutory authority functioning under the Tenth Schedule of the Constitution. This is well settled by the decisions of the Court

relating to Speaker's orders under the Tenth Schedule. Accordingly any power of the Speaker, available to him while functioning in the House is not to be treated as his power or privilege as the authority under the Tenth Schedule.

(xi) "The majority opinion in Kihota Hollohon was pressed into service by Shri Nariman as well as Shri Ashok Desai to support several aspects of their submissions. We may now refer to that opinion."

(xii) "In Kihota Hollohon there was no difference between the majority and minority opinions on the nature of finality attaching to the Speaker's order of disqualification made under para 6 of the Tenth Schedule, and also that para 7 therein was unconstitutional in view of the non-compliance, with the proviso to clause (2) of article 368 of the Constitution by which judicial review was sought to be excluded. The main difference in the two opinions was, that according to the majority opinion this defect resulted in the Constitution standing amended from the inception with insertion of the Tenth Schedule minus para 7 therein, while according to the minority the entire exercise of Constitutional amendment was futile and an abortive attempt to amend the Constitution, since para 7 was not severable. According to the minority view, all decisions rendered by the several Speakers under the Tenth Schedule were therefore, nullity and liable to be ignored. According to the majority view, para 7 of the Tenth Schedule being unconstitutional and severable, the Tenth Schedule minus para 7 was validly enacted and therefore, the orders made by the Speaker under the Tenth Schedule were not nullity but subject to judicial review. On the basis of the majority opinion, this Court has exercised the power of judicial review over the orders of disqualification made by the Speakers from the very inception of the Tenth Schedule, and the exercise of judicial review has not been confined merely to the orders of disqualification made after 12 November 1991 when the judgment in Kihota Hollohon was rendered. Venkatachaliah, J. (as he then was) wrote the majority opinion and, thereafter, on this premise, exercised the power of judicial review over orders of disqualification made prior to 12 November 1991. The basic fallacy in the submission made on behalf of the respondents that para 7 must be treated as existing till 12 November 1991 is that on that view there would be no power of judicial review against an order of disqualification

made by the Speaker prior to 12 November 1991 since para 7 in express terms totally excludes judicial review."

(xiii) "Accepting the submission of learned counsel for the respondents that para 7 must be read in the Tenth Schedule till 12 November 1991 when the judgment in *Kihota Hollohon* was rendered, for which submission they place reliance on the majority opinion in Kihota Hollohon would amount to taking a view contrary to the decision in Kihota Hollohon itself, as indicated."

(xiv) At one stage, Shri Nariman also attempted to read the majority opinion in *Kihota Hollohon* as not expressly declaring para 7 in the Tenth Schedule as unconstitutional, adding that such a declaration was made only in the minority opinion which declared the entire Tenth Schedule to be unconstitutional. We are unable to read the majority opinion in this manner. Any attempt to find support for the submissions of the respondents, in the majority opinion in *Kihota Hollohon* is futile.

xxx xxx xxx

(xv) . . . "The power of review which, it is suggested by counsel for the respondents, inheres in the Speaker by necessary implication has to be found in the provisions made in the Tenth Schedule alone, and not elsewhere. Para 7 has to be treated as non-existent in the Tenth Schedule from the very inception, as earlier indicated. As held by the majority in *Kihota Hollohon* judicial review is available against an order of disqualification made by the Speaker under para 6 of the Tenth Schedule, notwithstanding the finality mentioned therein. It is on account of the nature of finality attaching by virtue of para 6, that the judicial review available against the Speaker's order has been labelled as limited in para 110 (at page 711 of SCC) of the decision in *Kihota Hollohon* and the expression has to be understood in that sense distinguished from the wide power in an appeal, and no more. As held in *Kihota Hollohon* the Speaker's order is final being subject only to judicial review, according to the settled parameters of the exercise of power of judicial review in such cases, which it is not necessary to elaborate in the present context. The existence of judicial review against the Speaker's order of disqualification made under para 6 is itself a strong indication to the contrary that there can be no inherent power of review in the Speaker, read in the Tenth Schedule by necessary implication. The need for correction of errors in the Speaker's order made under

the Tenth Schedule is met by the availability of judicial review against the same, as held in Kihota Hollohon."

(xvi) "In our opinion there is no merit in the submission that the power of review inheres in the Speaker under the Tenth Schedule as a necessary incident of his jurisdiction to decide the question of disqualification; or that such a power existed till 12 November 1991 when the decision in Kihota Hollohon was rendered; or at least a limited power of review inheres in the Speaker to correct any palpable error outside the scope of judicial review."

Consequence:

(xvii) "On the above view taken by us, the orders dated 7 and 8 March 1991 made by the acting Speaker in purported exercise of the power of review are liable to be declared nullity and to be ignored, with the result that the orders dated 13 December 1990 disqualifying Chopdekar and Bandekar and dated 15 February 1991 disqualifying Ravi S. Naik as members of Goa Legislative Assembly would continue to operate."

(xviii) "Writ Petition No. 321 of 1990 filed by Chopdekar and Bandekar challenging the orders of their disqualification is pending in the High Court wherein an interim order staying the operation of their orders of disqualification is subsisting. Chopdekar and Bandekar can pursue that remedy to challenge their disqualification and no further order is required to be made by this Court for that purpose."

(xix) "However, Writ Petition No. 48 of 1991 which was filed in the High Court by Ravi S. Naik challenging his disqualification, wherein also an interim order was made staying the operation of the order of his disqualification, was not pressed by Ravi S. Naik after the order in purported exercise of power of review was made in his favour on 8 March 1991 and, therefore, that writ petition was dismissed as not pressed on 22 April 1991. The question is of the order, if any, required to be made by this Court in this situation."

(xx) "Having given our anxious consideration to the matter we have no doubt that the fact of Ravi S. Naik being the Chief Minister of the State of Goa is a wholly irrelevant circumstance for this purpose. All the same an order which would be just and proper to make in the circumstances of this case has to be made, taking into account also the fact that the law was declared and came to be settled only by the

decision of this Court in Kihota Hollohon, after the making of the orders of review by the acting Speaker in the present case, whereafter Writ Petition No. 48 of 1991 was dismissed as not pressed. We have no doubt that article 142 of the Constitution enables us, if necessary, to enlarge the powers of this Court for making an order which would be just in the facts and circumstances of this case."

(xxi) "In our opinion, it would be appropriate to revive Writ Petition No. 48 of 1991 for hearing on merits by the High Court as suggested even by Shri Ram Jethmalani, and to also order interim stay of the operation of the order of disqualification dated 15 February 1991 made by the Speaker, which was the situation prevailing till that writ petition was dismissed as not pressed. It is, however, necessary that Writ Petition No. 48 of 1991 and also Writ Petition No. 321 of 1990 should be heard and disposed of at the earliest, on account of their expediency.

Relief:

(xxii) "Accordingly, we allow these appeals in the following manner:

(1) The impugned orders of the High Court, dated 4 February 1992 dismissing Writ Petition No. 11 of 1992; dated 24 February 1992 dismissing Writ Petition No. 70 of 1992; and dated 4 February 1992 dismissing Writ Petition No. 8 of 1992 are set aside.

(2) Writ Petition Nos. 11 of 1992, 70 and 8 of 1992 are allowed declaring that orders dated 7 March 1992 and 8 March 1992 made by the acting Speaker in purported exercise of power of review are nullity and liable to be ignored.

(3) Consequently, orders dated 13 December 1990 made by the Speaker disqualifying Ratnakar Chopdekar and Sanjay Bandekar continue to operate and Writ Petition No. 321 of 1990 pending in the High Court has to be heard and decided on merits, in accordance with law.

(4) Similarly, order dated 15 February 1991 made by the Speaker disqualifying Ravi S. Naik continues to operate and Writ Petition No. 48 of 1991 filed in the High Court by him is revived by setting aside the High Court's order dated 24 February 1991 dismissing that writ petition as not pressed. The High Court will proceed to decide that writ petition also on merits, in accordance

with law.

(5) The interim order staying the order of disqualification in Writ Petition No. 48 of 1991 is revived. However, the parties would be at liberty to apply to the High Court for modification or cancellation of the said interim order or for any other interim relief or direction, if so advised.

(6) The High Court should hear and dispose of Writ Petition No. 48 of 1991 itself on merits as expeditiously as possible, preferably by 30 April 1993.

(7) Writ Petition No. 321 of 1990 filed by Ratnakar M. Chopdekar and Sanjay Bandekar pending in the High Court be also heard and disposed of as expeditiously as possible, preferably by 30 April 1993.

(8) Parties are directed to appear at the Goa Bench of the Bombay High Court on 6 April 1993, without any further notice, for obtaining further directions in this behalf.

(9) In the circumstances of the case, the parties will bear their own costs."

Supreme Court of India

*Ravi S. Naik vs Union of India & Others with Sanjay Bandekar & Another vs Union of India & Others**

The Court Held:

- *Expression 'voluntarily given up his membership' in para 2(1)(a) — not synonymous with resignation — has wider connotation.*
- *Anti-Defection Rules being procedural, cannot be equated with constitutional mandate — Violation of Rules does not afford ground for judicial review of Speaker's order disqualifying a member.*
- *A judicial review of a Speaker's order disqualifying a member, permissible in spite of finality imparted under para 6 to Speaker's decision.*
- *Insufficient time given to respondent for submitting reply to allegation in petition, does not result in denial of adequate opportunity.*
- *Reference to newspaper reports by Speaker for drawing inference about alleged facts does not violate principles of natural justice.*
- *Burden under para 2 lies on person who claims that an MLA has incurred disqualification — Burden under para 3 lies on member who claims that because of split in party, para 2 is not attracted.*
- *Speaker cannot refuse to recognize split on ground that requisite information is not furnished to him under Rules.*

Facts of the case

Elections for the Goa Legislative Assembly were held in November, 1989.

*AIR1994 SC 1558

The Assembly is consisted of 40 members. After the elections, the position of the Parties was as under :—

Congress (I)	-	20
Maharashtrawadi Gomantak Party (MGP)	-	18
Independents	-	2

The Congress (I) formed the Government with the support of one independent member. Subsequently, seven members left the Congress (I) and formed the Goan People's Party (GPP). Thereafter, GPP and MGP formed a coalition Government under the banner of Progressive Democratic Front (PDF). At first Shri Churchill Alemao became the Chief Minister, but later on Dr. Luis Proto Barbosa was sworn in as the Chief Minister. On 4 December 1990, MGP withdrew its support to the PDF Government and thereupon on 6 December 1990, a notification was issued summoning the Assembly on 10 December 1990 and the Chief Minister, Dr. Barbosa, was required to seek a Vote of Confidence. Before the Assembly could meet, Dr. Barbosa tendered his resignation as the Chief Minister on 10 December 1990 and the same was accepted. On 10 December 1990, Dr. Wilfred D'Souza, leader of the Congress (I) Legislature Party staked his claim to form the Government. He claimed the support of 20 members consisting of 13 members of the Congress (I), 4 members of GPP and 2 members of MGP and Dr. Barbosa of splinter group of GPP, who would form a common front known as the Congress Democratic Front (CDF). Two members of MGP, who were included in the CDF, were Sarvashri Sanjay Bandekar and Ratnakar Chopdekar. Shri Ramakant Khalap, who was the leader of the PDF claimed support of 16 members of MGP and three members who were formerly with GPP. The Governor submitted his report dated 11 December 1990 and taking into consideration the said report as well as other information received by him, the President of India issued a Proclamation dated 14 December 1990 under article 356 of the Constitution of India imposing the President's Rule in the State and suspending the Legislative Assembly.

In the meanwhile on 10 December 1990, Shri Ramakant Khalap filed two separate petitions under the Tenth Schedule to the Constitution before the Speaker of the State Legislative Assembly seeking disqualification of Sarvashri Bandekar and Chopdekar from the membership of the State Legislature in terms of provisions

of paragraphs 2(1)(a) and 2(1)(b) of the Tenth Schedule to the Constitution. By order dated 13 December 1990, the Speaker Shri Surendra Vir Sirsat, declared both the said members as disqualified from being members of the Goa Legislative Assembly on the ground of defections as set out in paragraphs 2(1)(a) and 2(1)(b) of the Tenth Schedule to the Constitution. Both these members filed a writ petition (Writ Petition No. 321 of 1990) in the High Court on 13 December 1990. The said writ petition was amended on 14 December 1990 to incorporate a challenge to the order dated 13 December 1990 passed by the Speaker. In response to the said petition, an interim order was passed by the High Court staying the operation of the order dated 13 December 1990 with regard to disqualification of the said members.

On 25 January 1991, the Proclamation with regard to the President's Rule was revoked and Shri Ravi S. Naik was sworn in as the Chief Minister. Shri Ravi S. Naik was elected to the Goa Legislative Assembly on the ticket and symbol of MGP. He also declared his party affiliation as MGP in the Form III filed by him under the Goa Assembly Anti-Defection Rules. On the day Shri Ravi Naik was sworn in as Chief Minister of Goa, Dr. Kashinath G. Jhalmi, member belonging to MGP gave a petition for disqualification under the Tenth Schedule against Shri Ravi S. Naik. In his petition Shri Jhalmi alleged that Shri Naik voluntarily gave up membership of his original political party *i.e.* MGP and hence had incurred disqualification for being member of the House in terms of provisions of para 2(1)(a) of the Tenth Schedule. Shri Ramakant D. Khalap, Leader of MGP from whom comments were sought, confirmed that Shri Ravi Naik voluntarily gave up membership of MGP and formed a separate group. Shri Ravi Naik in his comments contended that there was split in MGP and his splitaway group constituted one-third of the strength of MGP. Speaker, Shri Sirsat in his order dated 15 February, 1991 while holding that the members of splitaway group did not constitute the requisite one-third of the strength of MGP, declared Shri Naik as disqualified from being member of the Goa Legislative Assembly on the ground of defection set out in para 2(1)(a) of the Tenth Schedule.

Thereupon, Shri Naik filed a writ petition (Writ Petition No. 48 of 1991) in the Bombay High Court, Panaji Bench challenging the said order of disqualification dated 15 February 1991.

While the aforesaid writ petitions were pending in the High Court, Shri Sirsat was removed from the office of the Speaker and the Deputy Speaker began functioning as the Speaker in his place. Thereafter Sarvashri Bandekar and Chopdekar filed applications for review of the order dated 13 December 1990 with

regard to their disqualification and the said review applications were allowed by the Deputy Speaker functioning as Speaker by his order dated 7 March 1991 and order dated 13 December 1990 disqualifying Sarvashri Bandekar and Chopdekar was set aside. Shri Ramakant D. Khalap filed a writ petition (Writ Petition No. 8 of 1992) before the High Court of Bombay, Panaji Bench, Goa challenging the said order of review dated 7 March 1991. The said writ petition was dismissed on the ground of *laches* by the High Court on 4 February 1992. Civil Appeal No. 1095 of 1991 was filed in the Supreme Court against the said judgment of the High Court. Similarly, Shri Naik filed an application for review of the order dated 15 February 1991 which was allowed by the Deputy Speaker functioning as Speaker by order dated 8 March 1991. Dr. Jhalmi and Shri Ramakant Khalap filed writ petition No. 11/92 in the High Court challenging the said order of review dated 8 March 1991 passed by the acting Speaker and the said writ petition was dismissed by the High Court on ground of *laches* by order dated 4 February 1992. The appellants filed Civil Appeal No. 1094 of 1992 in the Supreme Court against the said order of the High Court. Another writ petition (No. 70 of 1992) was filed by Shri Churchill Alemao against the said order of the acting Speaker dated 8 March 1991 which was also dismissed by the High Court by order dated 15 February 1991 on the ground of *laches* and Civil Appeal No. 1096 was filed in the Supreme Court against the said order of the High Court.

All the three appeals (C.A. Nos. 1094-96 of 1992) were allowed by the Supreme Court *vide* their judgment dated 31 March 1993. *[Dr. Kashinath G. Jhalmi v. Speaker, (1993)2 SCC 703* (1993 AIR SCW 1578)]. By the said judgment, the Supreme Court set aside the impugned orders of the High Court dated 4 February 1992, dismissing Writ Petition Nos. 11 and 8 of 1992 and the order of the High Court dated 24 February 1992, dismissing Writ Petition No. 70 of 1992 while allowing the said writ petitions the Supreme Court declared that orders dated 7 March 1992 and 8 March 1992 made by the acting Speaker in purported exercise of the power of review are nullity and liable to be ignored. It was held that the orders dated 13 December 1990 passed by the Speaker disqualifying Sarvashri Chopdekar and Bandekar and the order dated 15 February 1991 passed by the Speaker disqualifying Shri Naik continue to operate and that the Writ Petition No. 321 of 1990 filed by Sarvashri Bandekar and Chopdekar and Writ Petition No.48 of 1991 filed by Shri Naik would stand revived and the same would be disposed of by the High Court on merits. Thereafter the High Court heard the two writ petitions on merits and by judgment dated 14 May 1993 both the writ petitions were dismissed.

It was against this order of the High Court of Bombay that appeals were made in the Supreme Court by Sarvashri Ravi S. Naik, Sanjay Bandekar and Ratnakar Chopdekar *vide* Civil Appeal Nos. 2904 and 3309 of 1993.

Decision/Judgment of the Court

The Supreme Court of India delivered the following judgment on 9 February 1994:—

(i) This appeal has been filed by Bandekar and Chopdekar who were elected to the Goa Legislative Assembly under the ticket of MGP. They have been disqualified from the membership of the Assembly under order of the Speaker dated 13 December 1992 (1990) on the ground of defection under paragraph 2(1)(a) and 2(1)(b) of the Tenth Schedule. From the judgment of the High Court it appears that disqualification on the ground of paragraph 2(1)(b) was not pressed on behalf of the contesting respondent and disqualification was sought on the ground of paragraph 2(1)(A) only. The said paragraph provides for disqualification of a member of a House belonging to a political party "if he has voluntarily given up his membership of such political party". The words "voluntarily given up his membership" are not synonymous with "resignation" and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

(ii) The petitions that were filed by Ramakant D. Khalap for disqualification of both these appellants are identical.

(iii) The Speaker, in his order dated 13 December 1990, has observed :

> "Dr. Jhalmi produced before me copies of several newspapers showing photos of the two MLAs with Congress (I) MLA and Dr. Barbosa etc. when they had met the Governor, with Dr. Wilfred D'Souza who had taken them to show that he had the support of 20 MLAs. This fact is well known in Goa and the Governor himself has admitted it. Dr. Jhalmi said that both the MLAs have given up the membership of their political party and have said so openly to him and others.

The reply filed by the two MLAs does not deny the fact that they went to the Governor against the Maharashtrawadi Gomantak Party. The advocate appearing for the MLAs said that he wanted to lead evidence. But, although both the MLAs were present before me, their advocate did not make them give evidence. They did not deny that they supported Dr. Wilfred D'Souza in his effort to form Congress (I) Government and went with him to the Governor as part of the 20 MLAs. They could not do so because it is a fact of common knowledge all over Goa that these two MLAs have left their political party.

I am satisfied that by their conduct, actions and speech they have voluntarily given up the membership of the MGP."

(iv) The High Court was of the view that in view of their conduct the appellants were not entitled to invoke the discretionary remedy of writ of *certiorari*. In this regard the High Court has pointed out that the assertion by the appellants in the writ petition that they were in Bombay on 9 December 1990 is a brazen lie since the report of the Governor dated 11 December 1990 made to the President of India (Which has been placed on record by Khalap with his affidavit) refers to the formation of the Congress Democratic Front by resolution adopted at Panaji on 9 December 1990 and the said resolution which was Annexure I to the said report contained the signatures of the appellants. The High Court has also observed that the statement in the petition that the appellants are still members of the parent party is false and suppression of truth inasmuch as they allowed this assertion to continue when, in effect as from January, 1991, they joined the faction of Naik and became ministers in his Cabinet and they continue to be the ministers.

The High Court has also examined the matter on merits and has found that the order dated 13 December 1990 passed by the Speaker does not suffer from any infirmity which may justify limited judicial review in accordance with the decision in Kihota Hollohon's case. The High Court has rejected the contention that the said order was passed in breach of the constitutional mandate for the reason that there was contravention of the Goa Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986, hereinafter referred to as the Disqualification Rules, made by the Speaker under paragraph 8 of the

Tenth Schedule. The High Court was also of the view that the Disqualification Rules made by the Speaker could not be held to be part of constitutional mandate and that they are only to regulate the procedure and that the substantive power or authority is given in paragraph 6 of the Tenth Schedule. According to the High Court violation of disqualification rules would only constitute an irregularity in procedure which is protected by paragraph 6(8) of the Tenth Schedule. The High Court also rejected the contention that there was violation of the principles of natural justice on account of extraneous materials or circumstances namely, the newspapers showing photographs of the appellants with Congress (I) MLAs and Dr. Barbosa when they had met the Governor with Dr. Wilfred D'Souza who had taken them to show that he had the support of 20 MLAs and the observation in the order passed by the Speaker that the Governor had told the Speaker that the appellant belonging to the MGP had approached him under the leadership of Dr. Wilfred D'Souza for staking claim to form Government on 10 December 1990 being considered by the Speaker in the impugned order. The High Court has observed that the Speaker has only relied upon the photos of the MLAs published in the newspaper reports which fact was undeniable inasmuch as the appellants have nowhere in their replies and even in the writ petition denied that they had met the Governor in the company of 18 other MLAs under the leadership of Dr. Wilfred D'Souza representing the Congress (I) and splinter group of GPP led by Dr. Barbosa. According to the High Court, when, as a fact, the appellants have admitted of having gone to the Governor to stake the claim in the afternoon of 10 December 1990, it was impossible to hold that the order be held as suffering from the vice of the order being based upon extraneous material and circumstances. Dealing with the grievance of the appellants that no opportunity was given to them to lead evidence, the High Court has held that the said submission was baseless since the Speaker in his order had recorded that although both the appellants were present before him their advocate did not make them give evidence. The High Court has observed that nothing prevented the appellants from leading their own evidence when it was their case that they wanted to lead evidence. In this context the High Court also pointed out that neither in their reply nor in the arguments before the Speaker the appellants had indicated whose

evidence they wanted to lead and record or what sort of evidence they wanted to bring. The High Court has also mentioned that when Dr. Jhalmi made a statement before the Speaker that the appellants had given up their membership of their political party and had said so openly to him and to others, neither the appellants nor their advocate sought to cross-examine Dr. Jhalmi on this statement".

(v) Shri A.K. Sen, the learned senior Counsel appearing for the appellants in support of the appeal, has assailed the order of the Speaker dated 13 December 1990 on the same grounds which were urged on behalf of the appellants before the High Court..."

(vi) The submission of Shri Sen is that the petitions that were filed by Khalap before the Speaker did not fulfil the requirements of clause (a) of sub-rule (5) of Rule 6 inasmuch as the said petition did not contain a concise statement of the material facts on which the petitioner (Khalap) was relying and further that the provisions of clause (b) of sub-rule (5) of Rule 6 were also not complied with inasmuch as the petitions were not accompanied by copies of the documentary evidence on which the petitioner was relying and the names and addresses of the persons and the list of such information as furnished by each such person. It was also submitted that the petitions were also not verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings and thus there was non-compliance of sub-rule (6) of Rule 6 also and that in view of the said infirmities the petitions were liable to be dismissed in view of sub-rule (2) of Rule 7. We are unable to accept the said contention of Shri Sen. The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as constructed by this Court in Kihota Hollohon's case. Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihota Hollohon's case is confined to breaches of the constitutional mandates, *mala fides*, non-compliance with rules of natural justice and perversity. We are unable to uphold the contention

of Shri Sen that the violation of the Disqualification Rules amounts to violation of constitutional mandates. By doing so we would be elevating the Rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot, therefore, be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of paragraph 6 of the Tenth Schedule as construed by this Court in Kihota Hollohon case.

(vii) Shri Sen has next contended that there has been violation of principles of natural justice inasmuch as in disregard of the provisions of Rule 7(3)(b) of the Disqualification Rules which provides for the comments being forwarded by the member concerned to the Speaker within a period of seven days of the receipt of the copy of the petition and annexures thereto; the appellants were given only two days time to file their reply to the petition. Shri Sen has urged that there has been violation of the principles of natural justice also for the reason that in the impugned order the Speaker has referred to certain extraneous materials and circumstances, namely, the copies of the newspapers that were produced by Dr. Jhalmi at the time of hearing and the talks which the Speaker had with the Governor. Another grievance raised by Shri Sen was that the appellants were denied the opportunity to adduce their evidence before the Speaker passed the impugned order.

(viii) Principles of natural justice have an important place in modern Administrative Law. They have been defined to mean "fair play in action". *(See : Smt. Maneka Gandhi vs. Union of India, (1978) 2 SCR* 621 at p 676 : (AIR 1978 SC 597 at p 625), Bhagwati, J.) As laid down by this Court "they constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men" *(Union of India v. Tulsi Ram, 1985 Supp. (2) SCR 131 at p 225) : (AIR 1985 SC 1416 at p. 1456).* An order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally *ultra vires* and,

therefore, suffers from a jurisdictional error. That is the reason why in spite of the finality imparted to the decision of the Speakers/Chairmen by paragraph 6(1) of the Tenth Schedule such a decision is subject to judicial review on the ground of non-compliance with rules of natural justice. But while applying the principles of natural justice, it must be borne in mind that "they are not immutable but flexible" and they are not cast in a rigid mould and they cannot be put in a legal strait-jacket. Whether the requirements of natural justice have been complied with or not has to be considered in the context of the facts and circumstances of a particular case.

(ix) It is no doubt true that under Rule 7(3)(b) of the Disqualification Rules, it has been provided that the member concerned can forward his comments in writing on the petitions within seven days of the receipt of the copies of the petition and the annexures thereto and in the instant case the appellants were given only two days time for submitting their replies. The appellants, however, did submit their replies to the petitions within the said period and the said replies were quite detailed. Having regard to the fact that there was no denial by the appellants of the allegation in paragraph 11 of the petitions about their having met the Governor on 10 December 1990 in the company of Dr. Barbosa and Dr. Wilfred D'Souza and other Congress (I) MLAs and the only dispute was whether from the said conduct of the appellants an inference could be drawn that the appellants had voluntarily given up their membership of the MGP, it cannot be said that the insufficient time given for submitting the reply has resulted in denial of adequate opportunity to the appellants to controvert the allegations contained in the petitions seeking disqualification of the appellants.

(x) As regards the reference to the newspapers in the impugned order passed by the Speaker, it appears that the Speaker, in his order, has only referred to the photographs as printed in the newspapers showing the appellants with Congress (I) MLAs and Dr. Barbosa, etc. when they had met the Governor with Dr. Wilfred D'Souza who had taken them to show that he had the support of 20 MLAs. The High Court has rightly pointed out that the Speaker, in referring to the photographs was drawing an inference about a fact which had not been denied by the appellants themselves, *viz.*, that they had met the Governor along with Dr. Wilfred D'Souza and Dr. Barbosa on 10 December 1990 in

the company of Congress (I) MLAs, etc. The talk between the Speaker and the Governor also refers to the same fact. In view of the absence of a denial by the appellants of the averment that they had met the Governor on 10 December 1990 accompanied by Dr. Barbosa and Dr. Wilfred D'Souza and Congress MLAs the controversy was confined to the question whether from the said conduct of the appellants an inference could be drawn that they had voluntarily given up the membership of the MGP. The reference to the newspapers reports and to the talk which Speaker had with the Governor, in the impugned order of disqualification does not, in these circumstances, introduce an infirmity which would vitiate the said order as being passed in violation of the principles of natural justice."

(xi) "The grievance that the appellants have been denied the opportunity to adduce the evidence is also without substance. The appellants were the best persons who could refute the allegations made in the petitions. In the impugned order, the Speaker has mentioned that the appellants were present before him but they did not come forward to give evidence. Moreover, they could have sought permission to cross-examine Dr. Jhalmi in respect of the statement made by him before the Speaker that the appellants had given up their membership of their political party and had said so openly to him and to others, in order to refute the correctness of the said statement. They, however, failed to do so."

(xii) "In the light of the aforesaid facts and circumstances we are unable to hold that the impugned order of disqualification was passed by the Speaker in violation of the principles of natural justice. Since we are of the view that the appellants have failed to make out case for interference with order dated 13 December 1990 passed by the Speaker disqualifying the appellants, we do not consider it necessary to go into the question about the appellants having disentitled themselves from invoking the jurisdiction of the High Court under article 226 of the Constitution. The judgment of the High Court dismissing the writ petitions of the appellants must be upheld and C.A. No. 3309 of 1993 filed by the said appellants must be dismissed."

C.A. No. 2904 of 1993

(xiii) This appeal relates to the disqualification of Ravi Naik under order of the Speaker dated 15 February 1991. As mentioned earlier, Naik was

sworn in as Chief Minister of Goa on 25 January 1991. On the same day Dr. Kashinath Jhalmi filed a petition before the Speaker of the Goa Legislative Assembly under article 191(2) read with para 2(a) of the Tenth Schedule to the Constitution wherein it was stated that Naik was elected to the Goa Legislative Assembly on the ticket and symbol of MGP at the last Assembly election and he had also given a Declaration in accordance with the Disqualification Rules that he belongs to MGP. In the said petition it was further stated that Naik had sworn himself as Chief Minister of Goa by voluntarily giving up the membership of and that he has claimed that he has given up membership of his original party, the MGP and that by his said action Naik has incurred disqualification for being a member of the House under the provision of article 191(2) of the Constitution of India read with paragraph 2(a) of the Tenth Schedule of the Constitution. After receipt of the said petition, the Speaker issued a notice on 29 January 1991, which was received by Naik on the same day, whereby Naik was required to submit his reply to the said petition by 5 February 1991. After receipt of the said Notice Naik submitted an application dated 5 February 1991 whereby he sought time of one month to file his reply to the petition on the ground that he has been advised bed rest in hospital for fifteen days and he was unable to apply his mind to give instructions to his lawyers. In the said application Naik further indicated that his case was going to be that he and several other members of Legislative Assembly belonging to MGP along with him constitute a group which has arisen on account of the split in the original political party. The Speaker, by his letter dated 6 February 1991 granted extension of time till 11 February 1991 for Naik to forward his comments. On 11 February 1991 Naik sent another letter requesting for further time for three weeks to forward his comments. The said request of Naik was refused by the Speaker and on 11 February 1991 he sent a letter informing Naik to appear before him for personal hearing on 13 February 1991 at 4.00 p.m. On 13 February 1991, Naik did not appear but an advocate appeared on his behalf and submitted his reply in writing.

(xiv) The Speaker, in his order dated 15 February 1991, has posed two questions — (1) Whether the alleged split is proved; and (2) Whether the group of MLAs who have dissociated from the party constitute

one-third of MLAs of original party. Both the questions were answered in the negative. The Speaker has observed that if there was really a split in the party and a separate group of MLAs of old MGP was formed, it was incumbent upon the leader of the group to give information of the split to the Speaker as required by Rule 3 of the Disqualification Rules in Form I but no such information had been furnished till the date of the order and that under Rule 4 of the Disqualification Rules each of the members of the group had to give a certificate to that effect by filing Form III and also had not been done till date of the order. The Speaker, in his order, has also mentioned that two MLAs of the alleged group had already been disqualified by him. Referring to the contention urged by the advocate appearing for Naik that there was a stay by the High Court against the disqualification of these two MLAs, the Speaker has observed :

> 'This argument cannot help the disqualified MLAs as stay from the court came after the order of disqualification was issued by me. Besides, recently the Parliament has held that the Speaker's order cannot be a subject matter of court proceedings and his decision is final as far as Tenth Schedule of Constitution of India is concerned.'

(xv) The Speaker has also mentioned that Dharma Chodankar had intimated to him on 14 January 1991 that Naik and others had obtained his signatures forcibly without his consent and against his will on a paper and that even on 13 February 1991 he had addressed a letter to the Speaker regarding sitting arrangements that he had no connection whatsoever with the Naik group and that he continues to be with the original political party. As regards the Resolution and the declaration on which reliance was placed by Naik, the Speaker has observed that on the reverse of the typed sheet of paper which purports to be a resolution passed on 24 December 1990 there are some signatures and that in the typed portion there are six names of which four are of MLAs including Naik and two are disqualified MLAs and that the name of Dharma Chodankar is not there. The Speaker has also observed that if he had been shown the notice calling the meeting at Ponda showing its exact venue and the time and the signatures of the persons who attended that meeting and minutes of that meeting there could be some evidence to show that such meeting had been actually held and that in the absence of any such proof the holding of the

meeting cannot be accepted. The Speaker was also of the view that not only the split has to be proved but it has to be proved by conforming to the Rules and in the face of the doubtful evidence represented by a typed sheet Resolution it could not be accepted and as no information as prescribed by the Rules was given, the split in the party was not proved. In his order, the Speaker has further stated that he had suggested that Naik should produce the affidavits of the members in person to support his case and he could have brought the six members in person or six affidavits of the erstwhile MGP MLAs who had joined his group after the so called split but he did not produce a single affidavit nor the persons and that out of eight signatures supposed to have been taken by Naik at Ponda on 24 December 1990, two were already disqualified and one Dharma Chodankar has stated in clear terms that he does not belong to the group. The Speaker, therefore, held that there was no group of one-third erstwhile MGP MLAs including Naik, and he declared Naik as disqualified from being a member of Goa Legislative Assembly under article 191 (2) read with para 2(a) of the Tenth Schedule to the Constitution."

(xvi) Before the High Court it was urged on behalf of Naik that in view of the stay order passed by the High Court on 14 December 1990 in Writ Petition No. 321 of 1990 filed by Bandekar and Chopdekar whereby the operation of the order dated 13 December 1990 regarding disqualification of Bandekar and Chopdekar had been stayed, the Speaker was not right in excluding the said two members from the group of Naik on the ground that they were disqualified members of Goa Legislative Assembly. Rejecting the said contention the High Court has observed :

> "It is true that the Speaker in the impugned order held that he is not bound by the stay order granted by the High Court as he had already made the disqualification orders earlier to the stay order granted by the High Court. The Speaker indeed further mentioned that recently the Parliament has held that the Speaker's order cannot be subject-matter of Court proceedings and his decision is final so far as the Tenth Schedule of the Constitution of India is concerned. The fact remains that when the Speaker made the orders of disqualification on 13 December 1990 the Division Bench had stayed the same on 14 December 1990 in the petition filed by Bandekar and Chopdekar.

The conclusions in Kihota's case were pronounced by the Supreme Court in November 1992 whereby para 7 of the Tenth Schedule ousting the jurisdiction of the Courts were held to be invalid and *ultra vires* the Constitution. The Speaker clearly mentioned that the decision rendered by the Speaker under the Tenth Schedule disqualifying a member cannot be a subject matter of court proceedings. Admittedly on the date on which he made the present impugned order, para 7 of the Tenth Schedule was not held invalid by the Apex Court and the invalidity came much later. On his interpretation of paras 6 and 7 of the Tenth Schedule, the Speaker held that the stay order granted by a Division Bench of this Court is not binding upon him. In such circumstances, it cannot be held that the action of the Speaker was perverse or *mala fide*. Had it been a fact that the Speaker was to make such order after the pronouncement of the conclusion in Kihota's case (1992 AIR SCW 3297), *i.e.*, after November 1991 the story would have been different. We do agree with Shri Ashok Desai, learned counsel that propriety demanded that the Speaker should have respected the order of the High Court but nothing turns on the same as by this Judgment the disqualification of Bandekar and Chopdekar is upheld which takes effect as from November, 1990."

(xvii) Another contention that was urged before the High Court on behalf of Naik was that the Speaker in his order dated 15 February 1991, has referred to letters dated 14 January 1991 and 13 February 1991 received by him from Dharma Chodankar and that the said letters were not disclosed to Naik earlier and Naik had no opportunity of producing evidence in rebuttal. The High Court has rejected the said contention with the observation :

"It must be seen that when for the first time the Legislative Assembly met on 13 February 1991 Dharma Chodankar admittedly sat in the Assembly at the sitting arrangement allotted to the original Maharashtrawadi Gomantak Party and Chodankar was not allotted a seat in the House with the so called breakaway group under the leadership of Ravi Naik. Though Ravi Naik, at some stage, had informed the Speaker of allotment of sitting arrangement for his group separately from the original Maharashtrawadi Gomanak Party, the Speaker did not accede to that request in so far as MLA

Dharma Chodankar is concerned. Ravi Naik remained content with such sitting arrangement with Dharma Chodankar sitting with the original party and it is not possible to accept that Ravi Naik had not noticed it when the Assembly session had taken place in the morning of that day. The inference that can be drawn from this is that Ravi Naik knew that Chodankar was not with him much before the hearing took place before the Speaker. In the circumstances, in our view, even the non-disclosure of letters of Chodankar cannot be said to have made any difference and that way caused any prejudice to the petitioner Ravi Naik. Upon reading the impugned order it also does not give an impression to this Court that the order of disqualification had been based solely upon this so called extraneous material. On the contrary, the order of disqualification is solely and mainly based upon the failure of Ravi Naik to adduce evidence to prove the split as required under para 3 of Tenth Schedule."

(xviii) "The High Court has laid emphasis on the point that in para 3 of the Tenth Schedule the burden of proof is on the member who claims that he and other members of his legislature party constitute a group representing a faction which has arisen as a result of a split in his original political party and such a group consists of not less than one-third of the members of such legislature party. According to the High Court since Naik had made a claim that there had been a split, the burden of proof to establish that there was a split was on Naik."

(xix) Shri Soli Sorabjee, learned senior Counsel appearing for Naik, assailing the findings recorded by the High Court has, in the first place, contended that in view of the stay order passed by the High Court on 14 December 1990 in Writ Petition No. 321 of 1990 filed by Bandekar and Chopdekar the Speaker could not have proceeded on the basis that Bandekar and Chopdekar stood disqualified as members of the Legislative Assembly on 24 December 1990 when there was a split, as claimed by Naik. As regards letters dated 14 January 1991 and 13 February 1991 received by the Speaker from Dharma Chodankar, Shri Sorabjee has urged that the said letters were never disclosed to Naik earlier and that the said documents could not be relied upon by the Speaker without affording an opportunity to Naik to adduce evidence in rebuttal and, moreover, in these letters Dharma Chodankar has not denied his signatures on the declaration dated 24 December 1990 which

has been produced by the appellant and has only claimed that his signatures had been obtained forcibly which means that he had actually signed the said declaration. Shri Sorabjee has urged that the question whether the signatures of Dharma Chodankar had been obtained forcibly on the said declaration could only be proved by evidence produced in the presence of the parties and that no evidence was adduced in support of the said allegation and in that view of the matter the Speaker could not ignore the signatures of Dharma Chodankar on the declaration dated 24 December 1990 and it could not be held that the members in the group formed by Naik was less than one-third of the members of the Legislature Party of Naik, namely MGP.

(xx) As noticed earlier paragraph 2 of the Tenth Schedule provides for disqualification on the ground of defection if the conditions laid down therein are fulfilled and paragraph 3 of the said Schedule avoids such disqualification in case of split. Paragraph 3 proceeds on the assumption that but for the applicability of the said provision the disqualification under paragraph 2 would be attracted. The burden to prove the requirements of paragraph 2 is on the person who claims that a member has incurred the disqualification and the burden to prove the requirements of paragraph 3 is on the member who claims that there has been a split in his original political party and by virtue of said split the disqualification under paragraph 2 is not attracted. In the present case Naik has not disputed that he has given up his membership of his original political party but he has claimed that there has been a split in the said party. The burden, therefore, lay on Naik to prove that the alleged split satisfies the requirements of paragraph 3. The said requirements are :

(i) The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original party; and

(ii) Such group must consist of not less than one-third of the members of such legislature party."

(xxi) "In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled. The total number of members in the Legislature Party of the MGP (the original political party) was 18. In

order to fulfill the requirements of paragraph 3 Naik's group should consist of not less than six members of the Legislature Party of the MGP. Naik has claimed that at the time of split on 24 December 1990 his group consisted of eight members whose signatures are contained in the Declaration, a copy of which was filed with the reply dated 13 February 1991."

(xxii) "The Speaker has held that the split had not been proved because no intimation about the split has been given to him in accordance with Rules 3 and 4 of the Disqualification Rules. We find it difficult to endorse this view. Rule 3 requires the information in respect of matters specified in clauses (a), (b) and (c) of sub-rule (1) to be furnished in the prescribed form (Form I) to the Speaker by the leader of the Legislature Party within 30 days after the first sitting of the House or where such legislature is formed after the first sitting, within 30 days after its formation. Rule 4 relates to information to be furnished by every member to the Secretary of the Assembly in the prescribed form (Form III). In respect of a member who has taken his seat in the House before the date of commencement of the Disqualification Rules, the information is required to be furnished within 30 days from such date. In respect of a member who takes his seat in the House after the commencement of the Disqualification Rules such information has to be furnished before making and subscribing an oath or affirmation under article 188 of the Constitution and taking his seat in the House. Rule 4 has no application in the present case because the stage for furnishing the required information had passed long back when the members made and subscribed to oath and affirmation after their election in 1989. Rule 3 also comes into play after the split and the failure on the part of the leader of the group that has been constituted as a result of the split does not mean that there has been no split. As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him. In the present case the split was sought to be proved by the Declaration dated 24 December 1990 whereby eight MLAs belonging to the MGP declared that they had constituted themselves into a group known as Maharashtrawadi Gomantak Party (Ravi Naik Group). A xerox copy of the said declaration was submitted along with the reply filed by Naik on 13 February 1991 and the original declaration bearing the signatures of the eight MLAs

was produced by the advocate for Naik during the course of the hearing before the Speaker on 13 February 1991. The genuineness of the signatures on the said declaration was not disputed before the Speaker. One of the signatories of the Declaration, namely Dharma Chodankar, had written to the Speaker that his signatures were obtained forcibly. That may have a bearing on the number of members constituting the group. But the fact that a group was constituted is established by the said Declaration.

(xxiii) "The question that requires consideration is whether as a result of the said group being constituted there was a split in the MGP as contemplated by paragraph 3 of the Tenth Schedule. The Speaker has held that the requirements of paragraph 3 were not fulfilled for the reason that the number of members of the group was less than one-third of the members of the Legislature Party of the MGP. For coming to the conclusion the Speaker has excluded Bandekar and Chopdekar on the ground that they stood disqualified under order dated 13 December 1990 passed by him and Dharma Chodankar was excluded on the ground that he had disowned his signatures on the Declaration. The said view of the Speaker has been assailed before us."

(xxiv) "We will first examine whether Bandekar and Chopdekar could be excluded from the group on the basis of order dated 13 December 1990 holding that they stood disqualified as members of the Goa Legislative Assembly. The said two members had filed Writ Petition No. 321 of 1990 in the Bombay High Court wherein they challenged the validity of the said order of disqualification and by order dated 14 December 1990 passed in the said writ petition the High Court had stayed the operation of the said order of disqualification dated 13 December 1990 passed by the Speaker. The effect of the stay of the operation of the order of disqualification dated 13 December 1990 was that with effect from 14 December 1990 the Declaration that Bandekar and Chopdekar were disqualified from being members of Goa Legislative Assembly under order dated 13 December 1991 was not operative and on 24 December 1990, the date of the alleged split, it could not be said that they were not members of Goa Legislative Assembly. One of the reasons given by the Speaker for not giving effect to the stay order passed by the High Court on 14 December 1990, was that the said order came after the order of disqualification was issued by him. We

are unable to appreciate this reason. Since the said order was passed in a writ petition challenging the validity of the order dated 13 December 1990 passed by the Speaker it, obviously, had to come after the order of disqualification was issued by the Speaker. The other reason given by the Speaker was that Parliament had held that the Speaker's order cannot be a subject-matter of court proceedings and his decision is final as far as Tenth Schedule of the Constitution is concerned. The said reason is also unsustainable in law. As to whether the order of the Speaker could be a subject-matter of court proceedings and whether his decision was final were questions involving the interpretation of the provisions contained in Tenth Schedule to the Constitution. On the date of the passing of the stay order dated 14 December 1990, the said questions were pending consideration before this Court. In the absence of an authoritative pronouncement by this Court the stay order passed by the High Court could not be ignored by the Speaker on the view that his order could not be a subject-matter of court proceedings and his decision was final. It is settled law that an order, even though interim in nature, is binding till it is set aside by a competent court and it cannot be ignored on the ground that the Court which passed the order had no jurisdiction to pass the same. Moreover the stay order was passed by the High Court which is a superior Court of Record and "in the case of a superior Court of Record, it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike a court of limited jurisdiction, the superior Court is entitled to determine for itself questions about its own jurisdiction". [*See* : Special Reference No. 1 of 1964, 1965 (1) SCR 413 at p. 499 : (AIR 1965 SC 745 at p. 789)].

(xxv) "The said question relating to the jurisdiction of the High Court to entertain the writ petitions challenging the order of the Speaker now stands concluded by the judgment of this Court in Kihota Hollohon case (1992 AIR SCW 3497) wherein the provisions of paragraph 7 of the Tenth Schedule have been held to be unconstitutional and paragraph 6 has been construed and it has been held that the Speaker, while passing an order in exercise of his powers under sub-paragraph (1) of paragraph 6 of the Tenth Schedule functions as a Tribunal and the order passed by him is subject to judicial review under articles 32, 136, 226 and 227 of the Constitution."

In Mulraj v. Murti Raghonathji Maharaj, (1967) 3 SCR 84 : (AIR 1967 SC 1386), this Court has dealt with effect of a stay order passed by a court and has laid down (at p. 1389 of AIR):

"In effect therefore a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts. It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalised for disobeying it. Further it is equally well settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That in our opinion is the only difference between an order of injunction to a party and an order of stay to a court."

This would mean that the Speaker was bound by the stay order passed by the High Court on 14 December 1990 and any action taken by him in disregard of the said stay order was a nullity. In the instant case the Speaker, in passing the order dated 15 February 1991 relating to disqualification, treated Bandekar and Chopdekar as disqualified members. This action of the Speaker was in disregard of the stay order dated 14 December 1990 passed by the Bombay High Court.

(xxvi) "The High Court has upheld the order of the Speaker, even though he had disregarded the stay order passed by the High Court, on the basis that on the date on which the Speaker had made the impugned order, paragraph 7 of the Tenth Schedule had not been held to be invalid by this Court and the invalidity came much later. The High Court has observed that on his interpretation of paragraphs 6 and 7 of the Tenth Schedule, the Speaker held that the stay order by the Division Bench was (not?) binding upon him and in such circumstances it could not be held that the action taken by the Speaker was perverse or *mala fide*. According to the High Court, the position would have been different if the Speaker was to make the order after the decision of the Court. We are unable to agree with this view of the High Court. The decision of this Court in Kihota Hollohon case declares the law as it was on the

date of the coming into force of the Constitution (Fifty-second Amendment) Act, 1985. The action of the Speaker in ignoring the stay order passed by the High Court while passing the order dated 15 February 1991 cannot be condoned on the view that in the absence of the decision of this Court it was open for the Speaker to proceed on his own interpretation of paragraphs 6 and 7 of the Tenth Schedule and ignore the stay order passed by the High Court."

(xxvii) "Relying upon the decision in *State of Orissa v. Madan Gopal Rungta,* 1952 SCR 28 : (AIR 1952 SC 12), Shri R. K. Garg learned senior Counsel appearing for respondent No. 5, has submitted that the interim order could only be issued in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding and not in derogation of the main relief and that it was open to the High Court, to pass an appropriate order while finally disposing of the Writ Petition. Shri Garg has contended that the High Court while finally disposing of the Writ Petition No. 321 of 1990 filed by Bandekar and Chopdekar upheld the order dated 13 January 1990 passed by the Speaker regarding disqualification of Bandekar and Chopdekar and in these circumstances it cannot be said that disregard of the interim order passed by the High Court on 14 December 1990 by the Speaker had the effect of rendering the subsequent order dated 15 February 1991 illegal. We are unable to agree with this contention. It is true that an interim order is issued in aid of or ancillary to the main relief and not in derogation of the main relief. The stay order passed by the High Court on 14 December 1990 staying the operation of the order dated 13 December 1990 passed by the Speaker had been issued in aid of and ancillary to the main relief in the Writ Petition No. 321 of 1990 which was for quashing of the said order dated 13 December 1990. The fact that the writ petition was ultimately dismissed and the impugned order dated 13 December 1990 passed by the Speaker was upheld by the High Court does not mean that the High Court had committed an error in passing the interim order for stay of operation of the order under challenge in the writ petition on 14 December 1990. The dismissal of the Writ Petition at the final stage does not, in our view, confer validity on the action which was taken by the Speaker on 15 February 1991 in passing the order disqualifying Naik in disregard of the stay order passed by the High Court on

14 December 1990. In the circumstances, it must be held that in view of the stay order passed by the High Court on 14 December 1990 in Writ Petition No. 321 of 1990, the Speaker while passing the order dated 15 February 1991 could not have proceeded on the basis that Bandekar and Chopdekar stood disqualified under his order dated 13 December 1990 and they could not be included in the group of Naik for the purpose of ascertaining whether the said group consisted of one-third members of the Legislature Party of MGP, the original political party. If the above two members are included within the group of Naik, then it is not disputed that the number of members in the group was more than one-third of the Legislature Party of MGP. This would be so even if Dharma Chodankar was excluded because the total number of members in the group of Naik would be seven and the number of members of the Legislature Party of MGP required for the purpose of a split under paragraph 3 of the Tenth Schedule was six. The order dated 15 February 1991, passed by the Speaker was, therefore, in violation of the Constitutional mandate contained in paragraph 3 of the Tenth Schedule to the Constitution and is liable to be quashed on the basis of the law laid down by this Court in Kihota Hollohon case."

(xxviii) "In that view of the matter we do not consider it necessary to deal with the submission of Shri Sorabjee that the action of the Speaker in excluding Dharma Chodankar from the group of Naik was in violation of the principles of natural justice."

(xxix) "In the result, while C.A. No. 3309 of 1993 filed by Bandekar and Chopdekar is dismissed, C.A. No. 2904 of 1993 filed by Naik is allowed. The order dated 14 May 1993 passed by the High Court in Writ Petition No. 48 of 1991 is set aside and the said writ petition is allowed and the order dated 15 February 1991 passed by the Speaker, Goa Legislative Assembly declaring Naik as disqualified for being a member of the Goa Legislative Assembly is quashed. There is no order to costs in both the appeals.

Order accordingly.

Supreme Court of India

*G. Viswanathan vs. Speaker, Tamil Nadu Legislative Assembly and another And Azhagu Thirunavukkarasu vs. Speaker, Tamil Nadu Legislative Assembly and another**

The Court Held:

* *Even if the political party, by which a person was set up as a candidate for election and was elected as a member of a House, expels such member from the party and he is being treated as 'unattached' by the Speaker consequent upon such expulsion, he will continue to belong to that political party.*
* *Only when he joins another party he will be treated to have voluntarily given up his membership of the party by which he was set up as a candidate for election.*
* *There is no 'unattached' category of members of the House under the provisions of the Constitution.*

Facts of the case

Sarvashri G. Viswanathan and Azhagu Thirunavukkarasu were members of the Tamil Nadu Legislative Assembly elected in the General Elections held in 1991. Both of them were candidates set up by the All India Anna Dravida Munnetra Khazhagam (AIADMK). Shri Viswanathan was elected from Arcot Legislative Assembly constituency whereas Shri Azhagu Thirunavukkarasu was elected from Orathanadu constituency. Both of them were expelled from AIADMK party on 8 January 1994. On 16 March 1994, the Speaker of Tamil Nadu Legislative Assembly declared the two members as 'unattached' members of the Assembly. Subsequently, Shri Subburethinam, another member of the Assembly, informed the Speaker that both the members had joined another (new) party called Marumalarchi

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Dravida Munnetra Kazhagam (MDMK) and hence they should, as per the provisions of law, be disqualified from the membership of the Assembly. On 6 March 1995, the Secretary of the Legislative Assembly issued a notice under Rule 7 of the Tamil Nadu Assembly (Disqualification on Ground of Defection) Rules, 1986, and called for the comments of the members on the representation made by Shri Subburethinam to disqualify them. The members filed Writ Petitions Nos. 3562 and 3563 of 1995 in the High Court of Judicature at Madras and assailed the said notice of the Secretary of the Assembly, dated 6 March 1995. Justice Shri Sivaraj Patil, by order dated 10 March 1995 dismissed the writ petitions.

Thereafter, the members filed representations before the Speaker, Tamil Nadu Legislative Assembly, stating they were "unattached members" of the Assembly and so the provisions of the Tenth Schedule to the Constitution of India regarding disqualification did not apply to them. They also prayed that the preliminary question as to whether the Tenth Schedule to the Constitution would apply to them, in view of the fact that they were unattached members, may be adjudicated in the first instance. The Speaker considered the entire matter in detail and disposed of the same by separate but similar orders dated 20 April 1995.

Discussing the matter in detail, the Speaker held that if a person is set up as a candidate for election by a political party and gets elected, he must be deemed always to belong to the same party from which he was elected and if he joins another political party, it would amount to voluntarily giving up his membership of such political party and will become subject to disqualification under sub-para(1) (a) of para 2. In the light of the admitted facts and the view of law held by him, particularly in view of the fact that the appellants had not denied in their explanation that they had joined a new party, the Speaker in para 20 of the said order, observed as under:

1. that they got elected to the Tamil Nadu Legislative Assembly as a candidate set up by a political party *viz.* All India Anna Dravida Munnetra Kazhagam (AIADMK);
2. that for the purpose of Tenth Schedule, they shall be deemed to belong to the political party, *i.e.*, All India Anna Dravida Munnetra Kazhagam (AIADMK) in accordance with the explanatory note of sub-para 2(1) (a), though he had been expelled from that party and declared as an 'unattached' member by me;
3. that they have joined another political party, *viz.*, Marumalarchi Dravida Munnetra Kazhagam;

4. that they have not denied any of the contents (sic) of the petitioners as alleged in the petition, and
5. that they do not come under the purview of the exception, envisaged in paras 3 and 4 of the Tenth Schedule.

It was held that the appellants had incurred disqualification for being members of the Tamil Nadu Legislative Assembly under article 191(2) of the Constitution of India read with clause (a) of sub-para(1) of para (2) of the Tenth Schedule and had ceased to be members of the Assembly with immediate effect.

The members filed Writ Petitions Nos. 6331 and 6332 of 1995 and assailed the aforesaid order of the Speaker dated 20 April 1995. They also filed Civil Miscellaneous Petitions (CMPs) Nos. 10261 and 10262 of 1995, praying for the grant of *ad interim* injunction to restrain the Speaker from giving effect to the aforesaid order. Though initially an order of injunction was passed, the single Judge vacated the injunction by his order dated 26 April 1995 and dismissed the CMPs. Aggrieved by the orders vacating interim injunction, the appellants filed Writ Appeals Nos. 559 and 560 of 1995. A Division Bench of the High Court noticing that the writ appeals and the writ petitions raised the same issues, heard them together and disposed them of by a common judgment dated 29 September 1995. The Division Bench saw no merit, whatsoever, in the writ petitions and the writ appeals and dismissed them.

It was against the said common judgment of the High Court that *Sarvashri* G. Viswanathan and Azhagu Thirunavukkarasu had filed Civil Appeals Nos. 2269-70 of 1996 with Nos. 2271-72 of 1996 in the Supreme Court of India.

Decision/Judgment of the Court

The Supreme Court delivered the following judgment in the matter on 24 January 1996:—

(i) "We heard Mr. Shanti Bhushan, senior counsel for the appellants and Mr. Soli J. Sorabjee, senior counsel for the respondents. The main thrust of the submissions made by the appellants' counsel was that para 2(a) of the Tenth Schedule of the Constitution comes into play only to disqualify a member who voluntarily gives up his membership of the political party that had set him up as a candidate, and not when he is expelled from the party and declared 'unattached' *i.e.* not belonging to any political party. Para 2(a) will apply only when a member himself, of his own volition, gives up his membership of the party. Any member thrown out or expelled from the party that had set him up as a candidate, will not fall within the mischief of para 2(a). By expulsion, the member thrown out will 'cease'

to be a member of the party that set him up as a candidate and even if he joins another party thereafter, it will not be a case of 'voluntarily' giving up his membership of the political party that had set him up as a candidate for the election. On the other hand, counsel for the respondents, Mr. Soli J. Sorabjee, submitted that the Tenth Schedule of the Constitution should be interpreted strictly, and keeping in view the mischief sought to be prevented by enacting the law, it is evident that though expulsion by the political party that had set up a person as a candidate by itself may not attract para 2(1)(a), the further act of his joining another party amounts to "voluntarily giving up" the membership of the political party that had set him up as a candidate. Learned counsel submitted that the deeming provision contained in the explanation should be given full effect and in the light of the finding that the appellants had joined another political party, the High Court was justified in confirming the conclusion of the Speaker that the appellants had voluntarily given up their membership of the political party that had set them up as candidates and had thereby incurred the disqualification for being members of the Assembly under article 191(2) of the Constitution read with clause (a) of sub-para (1) of para 2 of the Tenth Schedule."

(ii) "The crucial point raised in these appeals centres round the interpretation to be placed on 2(1)(a) read with the explanation thereto of the Tenth Schedule... Does a member of a House, belonging to a political party, become disqualified as having voluntarily given up his membership of such political party on his joining another political party after his expulsion from the former?"

(iii) "The legislative background for enacting the law affords a key for an understanding of the relevant provisions. What impelled Parliament to insert the Tenth Schedule can be seen from the Statement of Objects and Reasons appended to the Bill which ultimately resulted in the Constitution (Fifty-second Amendment) Act, 1985, quoted in the decision, *Kihota Hollohon v. Zachilhu.* It is to the following effect: (SCC p. 668, para 4)

> '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. This Bill is meant for outlawing defection and fulfilling the above assurance.'

When the constitutionality of the above provisions was challenged, this Court, *after referring to paras 2, 3 and 4 of the Tenth Schedule of the Constitution* stated

in Kihota Hollohon as under: (SCC p. 671, para 13)

> These provisions in the Tenth Schedule give recognition to the role of political parties in the political process. A political party goes before the electorate with a particular programme and it sets up candidates at the election on the basis of such programme. A person who gets elected as a candidate set up by a political party is so elected on the basis of the programme of that political party. The provisions of paragraph 2(1)(a) proceed on the premise that political propriety and morality demand that if such a person, after the election, changes his affiliation and leaves the political party which had set him up as a candidate at the election, then he should give up his membership of the legislature and go back before the electorate. The same yardstick is applied to a person who is elected as an Independent candidate and wishes to join a political party after the election."

(iv) "The scope of the legal fiction enacted in the explanation (a) to para 2(1) of the Tenth Schedule assumes importance in this context. By the decision of this Court it is fairly well settled that a deeming provision is an admission of the non-existence of the fact deemed. The Legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. It means that the courts must assume that such a state of affairs exists as real, and should imagine as real the consequences and incidents which inevitably flow therefrom, and give effect to the same."

(v) "It appears that since the explanation to para 2(1) of the Tenth Schedule provides that an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member, such person so set up as a candidate and elected as a member, shall continue to belong to that party. Even if such a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as 'unattached'. The further question is when does a person "voluntarily give up" his membership of such political party, as provided in para 2(1)(a)? The act of voluntarily giving up the membership of the political party may be either express or implied. When a person who has been thrown out or expelled from the party which set him up as a candidate and got elected, joins another (new) party, it will certainly amount to his voluntarily giving up the membership of the political party which had set him up as a candidate for election as such member."

(vi) "We are of the view that labelling of a member as 'unattached' finds no

place nor has any recognition in the Tenth Schedule. It appears to us that the classification of the members in the Tenth Schedule proceeds only on the manner of their entry into the House - (1) one who has been elected on his being set up by a political party as a candidate for election as such member; (2) one who has been elected as a member otherwise than as a candidate set up by any political party — usually referred to as an 'independent' candidate in an election; and (3) one who has been nominated. The categories mentioned are exhaustive. In our view, it is impermissible to invent a new category or clause other than the one envisaged or provided in the Tenth Schedule of the Constitution. If a person belonging to a political party that had set him up as a candidate, gets elected to the House and thereafter joins another political party for whatever reasons, either because of his expulsion from the party or otherwise, he voluntarily gives up his membership of the political party and incurs the disqualification. Being treated as 'unattached' is a matter of mere convenience outside the Tenth Schedule and does not alter the fact to be assumed under the explanation to para 2(1). Such an arrangement and labelling has no legal bearing so far as the Tenth Schedule is concerned. If the contention urged on behalf of the appellant is accepted it will defeat the very purpose for which the Tenth Schedule came to be introduced and would fail to suppress the mischief, namely, breach of faith of the electorate. We are, therefore, of the opinion that the deeming fiction must be given full effect for otherwise the expelled member would escape the rigor of the law which was intended to curb the evil of defections which has polluted our democratic polity."

(vii) "Mr. Shanti Bhushan (Counsel of respondents) laid stress on para 1(b) of the Tenth Schedule and contended that the legislature party in relation to a member of a House belonging to any political party means the group consisting of all the members of that House for the time being belonging to that political party, and so understood, the appellants who were thrown out or expelled from the party, did not belong to that political party nor will they be bound by any whip given by that party, and so, they are unattached members who did not belong to any political party, and in such a situation the deeming provision in sub-para (a) of the explanation to para 2(1) will not apply. We are afraid it is nothing but begging the question. Para 1(b) cannot be read in isolation. It should be read along with paras 2, 3 and 4. Para 1(b) in referring to the legislature party in relation to a member of a House belonging to any political party, refers to the provisions of paras 2,3 and 4, as the case may be, to mean the group consisting of all members of that House for the time being belonging to that political party in accordance with the said provisions, namely, paras 2, 3 and 4, as the case may be. Para 2(1) read with the explanation clearly points out that an

elected member shall continue to belong to that political party by which he was set up as a candidate for election as such member. This is so notwithstanding that he was thrown out or expelled from that party. That is a matter between the member and his party and has nothing to do so far as deeming clause in the Tenth Schedule is concerned. The action of a political party qua its member has no significance and cannot impinge on the fiction of law under the Tenth Schedule. We reject the plea solely based on clause 1(b) of the Tenth Schedule."

(viii) "Our attention was drawn to the decision of this Court in *Ravi S. Naik v. Union of India. In* the said decision, para 2(1)(a) of the Tenth Schedule of the Constitution was construed and it is observed at p. 649 thus: (SCC para 11).

> The said paragraph provides for disqualification of a member of a House belonging to a political party 'if he has voluntarily given up his membership of such political party'. The words 'voluntarily given up his membership' are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

If he of his own volition joins another political party, as the appellants did in the present case, he must be taken to have acquired the membership of another political party by abandoning the political party to which he belonged or must be deemed to have belonged under the explanation to para 2(1) of the Tenth Schedule. Of course, courts would insist on evidence which is positive, reliable and unequivocal."

(ix) "For the aforesaid reasons, we hold that the judgment of the High Court declining to interfere with the order of the disqualification passed by the Speaker, Tamil Nadu Legislative Assembly, calls for no interference in these appeals. The appeals are dismissed with costs. Each appellant to pay the costs in separate sets".

Supreme Court of India

*Mayawati vs. Markandeya Chand & Others**

Judgment of Court

* *Three separate judgments were given.*
* *Justice K.T.Thomas allowed the appeal; Justice M. Srinivasan dismissed the appeal.*
* *Chief Justice M.M. Punchhi held as follows:*
  - In Kihota Hollohon vs. Zachilhu, the Supreme Court in their majority judgment summed up the nature of function exercised by the Speaker/ Chairman under para 6(1) to be that of a Tribunal and the scope of judicial review under articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under para 6(2) to be confined to jurisdictional errors only *viz.* infirmities based on violation of constitutional mandate, *malafides*, non-compliance of rules of natural justice and perversity. The question, however, as to whether a member of the House has become subject to disqualification must arise for decision under 6(1) of the Tenth Schedule only on its being referred for decision of the Speaker/Chairman and not on his own whose decision shall be final.

    Judgment in Kihota Hollohon case is silent on the aspect as to whether cognition of the Speaker/Chairman of the occurrence of split is administrative in nature, unconnected with decision making on disqualification or is it an adjunct thereto.

    Role of the Speaker/Chairman under para 3 of the Tenth Schedule-no judicial interpretation so far - this important aspect needs to be determined, before, matter is examined as to the perversity or otherwise of the Speaker's decision obligating him at a point of time to record categorically when the split took place thereby pinning the time of

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such split - Matter, therefore, be referred to the Constitution Bench for decision.

Facts of the case

Elections held to the Uttar Pradesh Vidhan Sabha (Legislative Assembly) in 1996 resulted in a hung Assembly as no political party secured absolute majority. However, Kumari Mayawati became Cheif Minister of the State as her party Bahujan Samaj Party (BSP) consisting of 67 MLAs in the Assembly was supported by the MLAs belonging to Bhartiya Janata Party (BJP). But she demitted the office of Chief Minister on 29 September 1997 as per understanding between the aforesaid two parties. On the next day Shri Kalyan Singh, leader of the BJP Legislature Party became Chief Minister on the assumption, that BSP would support him. Contrary to the said assumption BSP withdrew support to Kalyan Singh Government on 17 October 1997. Shri Kalyan Singh was thereupon directed by the Governor to prove his majority in the Assembly. On 20 October 1997, Kumari Mayawati issued a whip to all the MLAs of her party in the following terms.

"You are hereby informed that you should be present in the Session of the UP Legislative Assembly on 21 October 1997 from 11 A.M. till the end of the sitting and vote against the Motion of Confidence moved by the BJP Government."

On 21 October 1997, 12 MLAs *viz.* Shri Markandeya Chand and 11 other MLAs from BSP voted in favour of the Motion of Confidence moved by Shri Kalyan Singh. Pandemonium broke out inside and consequently no business could be transacted. On 24 October 1997 Ms. Mayawati gave a petition under the Tenth Schedule to the Constitution and Rule 7 of the Members of Uttar Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987 (hereinafter referred to as Anti-Defection Rules) for a declaration that the 12 MLAs became disqualified as per paragraph 2(1)(b) of the Tenth Schedule to the Constitution. Thereafter respondents took up the plea that they, along with some more MLAs, (the total of which reached 23 in number), have formed themselves into a new political party by name Janatantrik Bahujan Samaj Party(JBSP).

On 5 December 1997, Ms. Mayawati filed an application for amendment of the petition in which disqualification of the respondents was sought under para 2(1)(a) of the Tenth Schedule.

In spite of opposition by the respondents the amendment was allowed to be made by the Speaker. Thereafter an additional written statement was filed by

Shri Vansh Narain Singh, one of the respondents on 2 February 1998. There was a narration therein of the split in BSP and formation of new group named as Janatantrik BSP. The reasons for the split were set out in detail. It was further stated that the strength of the members of JBSP was not less than one-third of the total number of BSP MLAs. Ms. Mayawati did not file any reply statement.

The matter was heard by the Speaker on 24 and 25 February 1998. During the course of the hearing, respondents 1 to 12 filed two affidavits containing a list of names of 26 members who formed part of the group on 21 October 1997. An explanation was given in the affidavits as to why there was delay in furnishing the names of those MLAs. Some of the members mentioned in the list were present before the Speaker along with the respondents. The appellant filed nine affidavits on the same day around 7.40 PM. The hearing concluded on 25 February 1998 and orders were reserved.

On 10 March 1998 the respondents filed another set of affidavits repeating the averments made in earlier affidavits. The Speaker pronounced the decision in the matter on 23 March 1998 wherein he dismissed the petitions for disqualification. He recognised 19 MLAs as forming a separate political party by the name JBSP.

It was this decision of the Speaker which was challenged in the appeal No. 5057 of 1998 by Ms. Mayawati. Originally S.L.P. was filed against the respondents 1 to 12 only *viz.* Shri Markandeya Chand and others. When the matter came before Court on 10 August 1998 on the request of the appellant's Counsel, the Speaker was added as a party (13th respondent) and the matter was adjourned to 25 August 1998, when the following order was passed:

> "Mr. Sibal, learned senior counsel for the petitioner states that the Speaker was got impleaded as a party because of the first respondent having raised an objection in his counter that the Speaker should have been made a party. Mr. Sibal further states that the Speaker, otherwise, is a pro forma party and he need not file a counter."

The matter was directed to be listed for final disposal on 8 September 1998 and liberty was given to the counsel for respondent to file additional affidavits if necessary.

Decision/ Judgment of the Court

The Supreme Court delivered their judgment in the matter on 9 October 1998. Three separate judgments were given in the matter by Chief Justice M.M. Punchhi, and Justices K.T. Thomas and M. Srinivasan.

Justice K.T. Thomas in his judgment while allowing the appeal declared that Shri Markandeya Chand and other eleven respondents stood disqualified to be members of the Uttar Pradesh Legislative Assembly under para 2(1)(a) of the Tenth Schedule to the Constitution of India.

Justice M. Srinivasan in his judgment while dismissing the appeal held that the Speaker, Uttar Pradesh Legislative Assembly had found on the basis of the records that the appellant instructed the members of the BSP to indulge in violence and disrupt the proceedings in the Assembly on 21 October 1997. It was also found that the allegations made by the respondents that the members of JBSP were kept under threat by the appellant and prevented from entering Lucknow. Justice Srinivasan accordingly held that in view of such finding, the discretionary jurisdiction under article 136 of the Constitution should not be exercised in favour of the appellant.

Chief Justice M.M. Punchhi after considering the two differing judgments, observed that the role of the Speaker/Chairman under para 3 of the Tenth Sohedule, on which there hasn't been any judicial interpretation so far, needed to be determined, before the matter is examined as to the perversity or otherwise of the Speaker's decision, obligating him at a point of time to record categorically when the split took place thereby pinning the time of such split. Chief Justice Punchhi accordingly observed that the matter may, therefore, be referred to the Constitution Bench for decision.

Justice K.T. Thomas in his judgment *inter alia* held as follows:

(i) "Two conditions are *sine qua non* for avoiding the disqualification when any member of the House voluntarily gives up membership of his original political party. First is that the member concerned should have made a claim that split in the original Political Party has arisen resulting in the constitution of a group in its legislature Party representing a faction thereof . Second is that such group should consist of not less than one-third of the members of such legislature Party."

(ii) "In order to establish that the first condition has been fulfilled the first respondent (Shri Markandeya Chand) has made a statement in the House on 21 October 1997 that the split of BSP Legislature Party had arisen consisting of a group which represents a faction of not less than one-third of the members thereof. It appears that the Speaker has proceeded on the assumption that a claim has been made as provided in the said paragraph."

(iii) "Regarding the second condition the Speaker held that there was a split in the Bahujan Samaj Party on 21 October 1997 and a faction had

arisen as a result of the split in the BSP and a group consisting of 26 BSP MLAs was constituted on 21 October 1997 itself representing the faction which did arise and that group is known Janatantrik BSP."

(iv) "According to the respondents the aforesaid finding being a finding of fact is not amenable to challenge as it was rendered by the Speaker of the Assembly on whom alone the jurisdiction is conferred to determine such disputed fact."

(v) "The scope of judicial scrutiny on matters pertaining to the decision of a Speaker passed under paragraph 6 of the Tenth Schedule has been elaborately considered by a Constitution Bench of this Court in Kihota Hollohon's case. One of the grounds urged before the Constitution Bench in support of the plea that Tenth Schedule is liable to be struck down as violative of basic features of the Constitution was that:" the investiture of the determinative and adjudicative jurisdiction in the Speaker would, by itself, vitiate the provision on the ground of reasonable likelihood of bias and lack of impartiality and therefore denies the imperative of an independent adjudicatory machinery. The Speaker is elected and holds office on the support of the majority party and is not required to resign his membership of the political party after his election to the office of the Speaker."

(vi) "Venkatachaliah, J. (as the learned Chief Justice then was) has delved into the importance of the office of the Speaker and found that the Speaker holds a high, important and ceremonial office, he is the very embodiment of propriety and impartiality and he performs wide ranging functions including the performance of important function of a judicial character, and observed thus:

> It would, indeed, be unfair to the high traditions of that great office to say that the investiture in it of this jurisdiction would be vitiated for violation of a basic feature of democracy. It is inappropriate to express distrust in the high office of the Speaker, merely because some of the Speakers are alleged, or even found, to have discharged their functions not in keeping with the great traditions of that high office. The robes of the Speaker do change and elevate the man inside.

(vii) "Accordingly, the contention that vesting of adjudicatory functions in the Speaker would vitiate the provision on the ground of likelihood of political bias was rejected."

(viii) "Paragraph 6 of the Tenth Schedule renders the decision of the Speaker final. The Constitution Bench considered its validity in Kihota Hollohon's case. In the majority judgment it was held that the finality clause in paragraph 6 does not completely exclude the jurisdiction of the Court under articles 136, 226 and 227 of the Constitution. Ultimately the Constitution Bench upheld the validity of the Tenth Schedule subject to the aforesaid rider. However, the Bench further held that the scope of judicial scrutiny is limited to ascertain whether the decision of the Speaker is vitiated by jurisdictional errors *viz.* "infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity."

(ix) "Shri Kapil Sibal, learned senior counsel who argued for the appellant focussed on the contention that the decision of the Speaker that on 21 October 1997 a split has arisen in the BSP comprising of more than 23 MLAs is vitiated by perversity. Of course learned counsel also contended that there was violation of constitutional mandate, and non-compliance with rules of natural justice. But ultimately the stress of the attack was confined to the ground of perversity. According to the counsel no authority conferred with the jurisdiction would have come to such a conclusion on the facts of this case. In the above context it was submitted by the counsel that a split can be recognized by a Speaker only if it is followed up by the steps prescribed in Rule 3 of the Disqualification Rules, as per which the Leader of the split faction should have furnished to the Speaker within thirty days from the date of its formation of the faction the following particulars: (a) a statement in writing in Form-I containing the names of the members and other particulars of the faction; (b) name and designation of such members of the faction who has been chosen its leader; (c) the names and designations of such members who have been authorised for the purposes of the Rules to correspond with the Speaker; (d) a copy of the Constitution and rules of the new legislature party and of the political party to which its members are affiliated."

(x) 'Legislature Party' is defined in paragraph 1(b) of the Tenth Schedule. It includes the group consisting of all members of the House for the time being belonging to that political party formed in accordance with paragraph 3. The definition applies, *inter alia.* to the faction formed as envisaged in paragraph 3. Hence the faction consisting of not less than

one-third members of the parent legislature party which was constituted as a sequel to the split arisen there from is also deemed to be a legislature party. The leader of such newly formed legislature party is also obliged to comply with the requirements contained in Rule 3 of the Disqualification Rules."

(xi) "According to the learned senior counsel, non-compliance with the Rules would lead to the inevitable consequence that respondents cannot be heard to contend that there was a split in BSP as envisaged in paragraph 3 of Tenth Schedule."

(xii) "Dr. L.M. Singhvi, learned senior counsel who argued for some of the respondents contended that non-compliance with the Rules would not by itself establish that the split pleaded by the respondents did not take place. According to the learned counsel, Rules are only procedural and they cannot get the status of constitutional provisions and cannot be equated there with. . ."

(xiii) Learned Judges who decided Ravi S. Naik, were considering the contention that petitions filed before the Speaker did not fulfil the requirements of Rule 6(5) (a) (b) and (6) of the Disqualification Rules inasmuch as those petitions were bereft of facts on which petitioner therein was relying and also for not appending copies of the documents and evidence in those petitions. It was hence contended before the Bench that such petitions were liable to be dismissed on that count alone. Learned Judges, while dealing with the above contention have observed thus :

> The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are, therefore, procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihota Hollohon case."

(xiv) "In Kihota Hollohon, the Constitution Bench, while dealing with the deeming provision contained in para 6(2) of the Tenth Schedule, made the observation that the immunity adumbrated therein is only for the irregularities of the procedure."

(xv) "We will not say that rules of procedure are on par with the constitutional mandate incorporated in the Tenth Schedule of the Constitution. Nonetheless, the procedure prescribed in the Disqualification Rules are meant to be followed for the purpose for which they are made. It is by virtue of the authority conferred by the Tenth Schedule that Disqualification Rules are formulated for giving effect to the provisions of the Schedule." What would have happened if the Rules have not been formulated as enjoined by paragraph 8 of the Tenth Schedule? The provisions of the Tenth Schedule could remain ineffective. So the Rules cannot be read in isolation from the provisions of the Tenth Schedule, instead they must be read as part of it. Of course, mere violation of a Rule is not enough to constitute violation of the provisions of the Tenth Schedule. When a certain procedure is required by the Rules to be adopted for giving effect to the provisions of the Constitution, the non-adoption of the procedure cannot be sidelined altogether as a mere procedure and of no consequence. Compliance or non-compliance with the Rules of Procedure would very much help the authorities to decide whether there was violation of the constitutional provision envisaged in the Tenth Schedule."

(xvi) "Before a claim is made by a member of the House under paragraph 3 of the Tenth Schedule a split in the political party should have arisen. Such a split must have caused its reaction in the Legislature Party also by formation of a group consisting of not less than one-third of the members of the Legislature party. We have to bear in mind that clause (b) of paragraph 3 mandates that for the purposes of this paragraph such factions shall be deemed to be the original political party of the member concerned 'from the time of such split.' What is the overt act through which formation of such a group can be perceived by the Speaker? It is in this context that Rule 3 of the Disqualification Rules assumes relevance and importance. Unless the particulars required in the Rule are furnished how would the Speaker know , authoritatively, of the formation of such a group? Ordinarily such information must be furnished as early as possible. But there can be rare cases in which it may not be possible due to situational reasons, to furnish the particulars soon after the formation of such a group. But the 30 days time provided in the Rule is not to be understood as any indication to dispense with the promptitude in furnishing those particulars. The time 30 days fixed

in Rule 3 must be treated as the outer limit within which the Speaker should be informed of the particulars required. So the need for compliance with Rule 3 is not a bare formality. Insistence on compliance with the rule is therefore, to enable the Speaker to decide whether the protection envisaged in the 3rd paragraph can be afforded to the members concerned."

(xvii) "We are of the opinion that a Speaker has to consider the repercussions of non-compliance of a particular rule in the Disqualification Rules to ascertain how far it has affected the credibility of the case of a claimant who seeks protection under paragraph 3 of the Tenth Schedule."

(xviii) "The Speaker has accepted the plea of the respondents that there was a split as envisaged in paragraph 3 of the Tenth Schedule. The said finding can be subjected to judicial scrutiny only in the limited sphere indicated in Kihota Hollohon's case *viz.* whether the infirmities are based on violation of constitutional mandate; *mala fides*, non-compliance with the rules of natural justice and perversity. This is a case where appellant did not succeed in showing a case of *mala fide* or non-compliance with the rules of natural justice as for the conclusion arrived at by the Speaker. As pointed out earlier the main endeavour of the learned counsel was to show that the finding of the Speaker is vitiated by perversity in the sense that the conclusion is so unreasonable that no tribunal would have arrived at it on the given facts."

(xix) "It is suggested on behalf of the respondents that if the conclusion of the Speaker is based on some materials it is immune from judicial interference because of two broad restrictions. First is the extremely limited scope of judicial scrutiny which is permitted by law as indicated by the Constitution Bench in Kihota Hollohon's case. Second is the positional height of the Speaker as a constitutional functionary upon whom the jurisdiction is conferred to determine the disputes under the Tenth Schedule. Shri Ashok Desai, learned senior counsel contended for the extreme position that if the conclusion reached by the said functionary is a possible conclusion it stands insulated from any outside interference including by judicial exercise."

(xx) "The said extreme proposition may lead to the situation that, no matter, however illegal the order may be, it cannot be touched if its author is the Speaker. I am unable to concede such an immunity to any constitutional functionary to be above law or to have unfettered

jurisdiction to pass unreasonable orders with immunity. The test cannot be whether it is possible for the Speaker to record such a conclusion, because the very fact that the Speaker passed an order itself is the instance to show that it is possible. The test is whether the conclusion or the finding made by the Speaker is so unreasonable or so unconscionable that no tribunal should have arrived at it on the given materials."

(xxi) "Parameters for scrutinising what is unreasonable are, of course, nebulous. What appears to be reasonable to one man may be unreasonable to another and *vice versa*. It was perhaps that approach which made Lord Hailsham to make his quaint comment that two reasonable persons can reach diametrically opposite conclusions on the same set of facts without either of them forfeiting the credential to be reasonable. However, the test of perversity has now bogged down to this:

> No conclusion can be dubbed as perverse unless the unreasonableness is of such a dimension that no authority vested with the jurisdiction would have come to such a conclusion. . ."

(xxii) "The Speaker has, in the impugned order, adverted to the following facts to support his conclusion :

(1) In the affidavit filed by Shri Vansh Narain Patel (6th respondent) and others on 2 February 1998 it is mentioned that a split was formed on 21 October 1997 at the lobby of the House when not less than one-third of the total members of BSP MLAs discussed and decided to separate from BSP under the leadership of Shri Markandeya Chand (1st respondent). The number of such MLAs is mentioned in the affidavit as 23.

(2) Appellant and her followers did not file any reply to the said affidavits.

(3) On 21 October 1997 Shri Vansh Narain Patel announced on the floor of the House that more than one-third MLAs of the BSP have come out of the party.

(4) Even though the respondents failed to mention the names of the 23 MLAs who formed such a faction in spite of opportunities granted including the last opportunity on 9 February 1998, they disclosed the names of 26 MLAs of the BSP who formed the split, in the affidavit filed on 25 February 1998.

(5) The facts stated in the said affidavits have not been controverted "despite opportunity having been given."

(xxiii) "In substance the crucial circumstances which persuaded the Speaker to rely on the *ipse dixit* in the affidavit filed by Markandeya Chand and Vansh Narain Patel on 25 February 1998 is that appellant has not controverted it."

(xxiv) "It must be remembered that it is an undisputed fact that at no time the number of BSP MLAs who voted for Kalyan Singh's Government had reached the number 23 (which is the minimum number necessary to constitute the required percentage for forming a split as envisaged under the 3rd paragraph of the Tenth Schedule). It must further be remembered that the number of individual MLAs who held out that they left BSP had never reached 23 either then or even now. (Of course appellant had admitted that in addition to 12 respondents who had defected on 21 October 1997 some more MLAs subsequently crossed the floor and their number was only 5 and thus the total number of defectors reached 17."

(xxv) "If what the Speaker has pointed out is correct (that the assertion contained in the affidavit filed by Respondent No. 1 and Respondent No. 6 on 25 February 1998 have not been controverted despite granting opportunity to do so) it is not proper to question the conclusion arrived at by the Speaker that there was a split as envisaged in the third paragraph of the Tenth Schedule. If that is the position this court will not probe into all other criticism made against the order passed by the Speaker. But a scrutiny of the materials first shows that as a matter of fact no opportunity whatsoever was given to the appellant to controvert the assertions made in the affidavit of 25 February 1998. The observation of the Speaker to the contrary is without any foundation. The proceedings minuted by the Speaker himself on 25 February 1998 at 6.00 P.M. contained the following entries after referring to the two affidavits being filed by Shri Narendra Singh; and Markandeya Chand:

'The same was objected to by Shri Umesh Chand, learned counsel for the petitioner on the ground that those affidavits have been filed after 9 February 1998 which was the last date to produce evidence whether the above affidavits should be taken on record or not, or whether they should be read in evidence or not, will be considered presently during argument.

(xxvi) "The second glaring feature which has winched to the fore during judicial scrutiny is that the appellant had in fact strongly controverted the stand of the respondent regarding formation of a split. On the same day when 6th respondent filed the affidavit (*i.e.* 25 February 1998) specifying the names of 26 MLAs, the appellant had, on her own initiative, filed a petition at 7.30 P.M. pointedly repudiating the above claim of the respondents. . ."

(xxvii) Appellant had produced affidavits of nine MLAs along with the said petition. All such affidavits contained averments forcefully repudiating the claim of the first respondent that on 21 October 1997 he got the support of 23 MLAs of BSP. All those affidavits are identically worded.

(xxviii) "Now the contention is that the said affidavits were procured in November 1997 and hence they cannot be answers to the affidavits of the 1st respondent dated 25 February 1998. Explanation of the appellant for that is very important. According to the learned counsel for the appellant, she has been collecting affidavits of all the MLAs who loyally remained in the party since 1st respondent made a claim on 21 October 1997 that 23 MLAs have gone out of her party. She could get affidavits only one by one from all those MLAs who remained in the party so that she could show them whenever the need arose. Where was the opportunity for the appellant to produce the affidavits of nine MLAs until 25 February 1998 when for the first time 1st respondent proclaimed the names of 26 MLAs who have defected on 21 October 1997? But when we perceived the promptitude with which appellant controverted it and supported her statement with the affidavits of all the nine MLAs, we feel that it is very unfortunate that she is accused of the charge that she has not controverted the affidavits filed by the respondents on 25 February 1998."

(xxix) "Thus the basis of Speaker's conclusion *i.e.* appellant has not denied the assertion of the respondents made in the affidavit dated 25 February 1998 is non-existent. If so, the Speaker must necessarily have other materials to decide that the number of deserters reached the crucial limit of 23. Even on the day when 1st respondent announced in the Assembly (21 October 1997) that 23 BSP MLAs under his leadership have separated from the parent party and decided to support Kalyan Singh's Government the fact remained that only 12 MLAs (who are the respondents) voted in favour of the Government. The other MLAs

who are alleged to have joined the faction repudiated the allegation in unmistakable terms. Thus when admittedly the number of BSP MLAs who supported Kalyan Singh's Government had never reached the figure 23 at any time, even subsequently, and when respondents could never even mention the names of those 23 MLAs at any time in spite of the Speaker granting opportunities to them for the purpose including the last opportunity on 9 February 1998, it is a perverse conclusion, overlooking the aforesaid formidable circumstances that 23 MLAs had split from the BSP on 21 October 1997. We have absolutely no doubt that no authority vested with jurisdiction to decide the question should ever have reached such a conclusion on the facts and materials made available to him."

(xxx) "The danger involved in upholding such a conclusion of the Speaker merely relying on the *ipse dixit* of the defectors can be illustrated thus: From one Legislature Party (having a strength of say one hundred members) two MLAs, A and B, defected and when they were confronted with the consequence of disqualification, they sought protection under the third paragraph of Tenth Schedule by saying that along with them 31 more MLAs of their party have also gone out of the party and A and B mentioned their names also. But all those 31 MLAs repudiated the allegations. In such a case the Speaker holds that the two defectors have the protection of the third paragraph for the simple reason that the Speaker chose to believe their *ipse dixit*. Such a syllogism, if adopted, would be preposterous and revolting to judicial conscience from any standard of reasonableness and would toll the death knell of the Constitutional philosophy enshrined in the Tenth Schedule. The finding in the impugned order is not materially different from the aforecited illustration."

(xxxi) "I, therefore, unhesitatingly hold that the finding of the Speaker that a split arose in the BSP on 21 October 1997 forming a group representing a faction consisting of not less than one-third of the members of the Legislature Party of BSP is vitiated by perversity. The corollary of it is that the 12 respondents who have defected from the BSP on the said date cannot escape from the consequence provided in sub-clause (a) of paragraph 2(1) of the Tenth Schedule."

(xxxii) "In the light of our above finding it is unnecessary to consider the next question relating to sub-clause (b) of paragraph 2(1) of the Tenth

Schedule because such a venture would only be of academic utility now."

(xxxiii) "Learned senior counsel for the respondents made an alternative contention that in the event this Court holds that the finding of the Speaker is perverse the next course to be adopted is to remit the matter to the Speaker for his final decision. Learned counsel cited some decisions of this Court which held the proposition that it is not the function of Courts of law to substitute their wisdom and decision for that of the authority to whose judgment the matter in question is entrusted by law."

(xxxiv) In cases where the authority vested with jurisdiction has to consider and reach a fresh decision it is necessary that after exercising judicial scrutiny the matter must go back to such authority for fresh decision. But in the present case the situation is different. A remit to the Speaker will not serve any additional purpose because there is nothing further for him to decide. As the respondents, having given up their membership from the parent political party voluntarily, have sought to insulate such severance with the cover provided in paragraph 3 of the Tenth Schedule, the only issue to be decided is whether the respondents are entitled to such protection. When this Court found that the aforesaid protection is not available to them under law in substitution of the contra finding made by the Speaker, its inevitable sequetor is that all the twelve respondents stand disqualified under paragraph 2(1) (a) of the Tenth Schedule of the Constitution. The impugned order would stand thus altered."

(xxxv) "I may point out, in this context, that the action of the Speaker, in allowing the 12 respondents to register their votes in a composite poll held by the Speaker on 26 February 1998 (as between Shri Kalyan Singh and Shri Jagdambika Pal - a rival claimant to the post of Chief Ministership) without deciding the complaint made by the appellant seeking their disqualification from the membership of the House, was criticised before this Court in Special Leave Petition (Civil) No. 4495 of 1998. This Court then noted in the Order dated 27 February 1991 that out of 225 MLAs who voted in favour of Shri Kalyan Singh as against 196 MLAs (who supported Shri Jagdambika Pal) the votes of 12 respondents were also counted. However, the Court did not in that case pursue the said criticism made against the Speaker mainly for the following reasoning: Even when those 12 members are taken to have voted in favour of

Shri Kalyan Singh, their votes when substracted from those polled still leaves him to be the one having majority in the House. Correspondingly, those 12 votes do not go to Shri Jagdambika Pal who would still be in minority."

(xxxvi) Presumably on the above premise it was submitted before us that disqualification of 12 respondents would not affect the Government of Shri Kalyan Singh which even otherwise commands a majority in the House. We make it clear that our decision, on the present issue, is not intended to disturb the Government of Shri Kalyan Singh in any manner so long as he commands majority in the Legislative Assembly. But that aspect cannot detract us from exercising power of judicial review of the impugned verdict."

(xxxvii) "In the result this appeal is allowed by declaring that the twelve respondents stand disqualified to be members of the U.P. Legislative Assembly under paragraph 2(1)(a) of the Tenth Schedule of the Constitution of India."

Justice M. Srinivasan in his judgment *inter alia* held as follows :

Finding of the Speaker

(i) "The direction/whip dated 20 October 1997 by the appellant was not issued in accordance with paragraph 2 (1) (b) of the Tenth Schedule of the Constitution and as such it was unconstitutional and illegal with the result the respondents are not liable to be disqualified under that paragraph for voting contrary to it."

(ii) "The petitions filed by the appellant did not fulfil the requirements of 'The Members of Uttar Pradesh Legislative Assembly (Disqualification on Ground of Defection) Rules, 1987' (hereinafter referred to as the Rules) inasmuch as they did not contain a statement of material facts and consequently the petitions were liable to be dismissed under Rule 8 (ii) of the said rule."

(iii) "The appellant had in fact issued a direction on 21 October 1997 to the B.S.P. MLAs for creating disturbances and committing violence in the House on that date and therefore the direction issued by her earlier on 20 October 1997 was superseded/withdrawn/waived and made ineffective. As such, the respondents could not be disqualified for having voted contrary to the direction dated 20 October 1997."

(iv) "There was a split in the B.S.P. on 21 October 1997 as a result of which there arose a faction and 26 M.L.As. mentioned in annexures 1 and 2 of Chowdhary Narender Singh's affidavit dated 24 February 1998 who were more than one-third members of the BSP Legislature Party constituted a group representing the said faction. Consequently, the group became the 'original political party' known as JBSP. The members of the said group were entitled to protection of para 3 of the Tenth Schedule of the Constitution. Further, after the split of the BSP and formation of the group of 26 MLAs on 20 October 1997, there was a further split in the JBSP on 15 January 1998 as a result of which 19 MLAs continued to remain members of JBSP Legislature Party."

(v) "As a result of the aforesaid findings the petitions filed by the appellant and the petitions filed by R.K. Chaudhary were dismissed. The 19 persons set out in the order were declared as members of JBSP in the Assembly."

Contentions

(i) "Mr. Kapil Sibal who appeared for the appellant submitted that the order of the Speaker suffers from jurisdictional errors based on violation of the constitutional mandates. Non-compliance with rules of natural justice and perversity. He stated expressly that he was not attacking the order on grounds of bias or *mala fides* though they were raised in the S.L.P. "

(ii) "Dr. L.M. Singhvi argued on behalf of the first respondent while Mr. Ashok Desai represented respondents 2 and 3. Mr. R.K. Jain argued for respondents 4,5 and 6 and Mr. K.N. Balgopal represented the 7th respondent. The substance of the contention urged on behalf of the respondents is as follows :

> The order of the Speaker is a well structured one. The findings of facts rendered by him are based on the evidence on record. The order does not suffer from any perversity. Nor is it vitiated by violation of Constitutional mandates or principles of natural justice. Even if the order is set aside, the matter has to go back to the Speaker for a fresh decision in accordance with the judgment of this Court."

Article 145 (3) of the Constitution

(i) "In the midst of his arguments Dr. Singhvi invited our attention to article 145 (3) of the Constitution of India and submitted that as the case involves several substantial questions of law as to the interpretation of the Constitution it should be heard by minimum number of five Judges. When the said submission was made, arguments had already been heard for two days. The Hon'ble Chief Justice observed that there is an 'Interpretation Clause' in the Tenth Schedule and every question of law is not a substantial question of law. Dr. Singhvi did not persist the matter further. However, Mr. Ashok Desai who argued on the last day of the hearing handed over a paper setting out proposed substantial questions of law/questions as to interpretation of the Constitution. He has mentioned nine questions therein. In my view question numbers 4 and 9 therein fall within the ambit of article 145 (3). They read as follows:

(ii) "The manner, authority, and other requirements of a valid whip for disqualification under clause 2 (1) (b) of the Tenth Schedule, especially the meaning of expressions "Political Party" and of "any person or authority authorised."

"Whether order of Speaker refusing to disqualify members of House be substituted by disqualification in course of judicial review."

Discussion

(i) "The contentions of the appellant's counsel can be classified under three main heads (i) violation of Constitutional Mandates (ii) violation of principles of Natural Justice; (iii) Perversity.

(i) Violation of Constitutional Mandates

This can be sub-divided into two:

(a) violation of para 2 (1) (b);

(b) violation of para 2 (1) (a) of the Tenth Schedule of the Constitution.

A common defence to grounds under both sub-paras (a) & (b), is available in para 3. If the situation contemplated in para 3 is proved, neither para (a) nor para (b) will help the appellant. . ."

(ii) "Apart from the defence under para 3, an additional defence relating to para 2 (1) (b) has been raised in his case. That has been accepted by the Speaker and findings have been rendered accordingly. Though it is

a question involving interpretation of a provision in the Constitution and requires to be decided by a Bench of at least five Judges, I am bound to express my opinion here as the case has been heard fully by this Bench. Both parties argued the question at length before the Speaker and invited his findings. Before us also, the appellant's counsel argued it at length and the respondents' counsel replied. Hence it is necessary to express an opinion."

(iii) "The argument of the appellant is that the expression 'political party' in sub-para (b) means political party in the House', in other words, the 'Legislature Party'. This argument runs counter to the definition contained in para 1 (c). According to that definition, 'original political party' in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2. The expression 'original political party' is used in para 3 only. Para 2, does not at all use the expression 'original political party'. The said expression in para 3 is equated to the expression 'political party' in para 2 (1). The definition clause in para 1 (c) does not make any distinction between sub-para (a) and sub-para (b) of para 2. But the appellant's counsel wants to make such a distinction. According to him 'political party' in sub-para (a) would refer to 'original political party' but the same expression in sub-para (b) would refer only to the 'Legislature Party'. The term 'Legislature Party' having been defined in para 1(b) could well have been used in para 2 (1) (b) instead of the term 'political party' if the intention of the Parliament was to refer only to the Legislature Party."

(iv) "There is another feature in para 3 (b) which negatives the appellant's argument. According to para 3(b), from the time of split in the original political party such as the one referred to in the first part of the para, the faction referred to therein shall be deemed to be the political party to which the concerned member belongs for the purposes of sub-para (1) of para 2 and to be his original political party for the purposes of paragraph 3. The entire sub-paragraph (1) of para 2 is referred to therein meaning thereby both clauses (a) and (b) of the sub-para 1 and no distinction is made between the two clauses. Hence for the purposes of clause 'a' as well as clause 'b' the faction referred to in the first part of para 3 shall be deemed to be the 'political party' mentioned in the sub-para and the same faction shall be deemed to be the original 'political

party' mentioned in para 3. It is thus clear that 'political party' in clause (b) of sub-para (1) of para 2 is none other than 'original political party' mentioned in para 3."

(v) "The argument that the context in para 2 (1) (b) requires to equate 'political party' with 'legislature party' even though the definition clause reads differently is not acceptable. A reading of sub-para (b) and the Explanation in para 2 (1) places the matter beyond doubt that the 'political party' in sub-para (b) refers to the 'original political party' only and not to the Legislature Party. According to the explanation, for the purpose of the entire sub-para, an elected member of the House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member. Certainly, the Legislature Party could not have set up the concerned member as a candidate for election."

(vi) "According to learned counsel for the appellant, the Legislature Party may have to take decisions on urgent matters in the House and as it represents the original political party in the House, whatever direction is issued by the Leader of such Legislature Party must be regarded as a direction issued by the Political Party. There is no merit in this contention. "When the provision in the Constitution has taken care to make a distinction between the Legislature Party and the original Political Party and prescribe that the direction should be one issued by the political party or by any person or authority authorised in this behalf, there is no meaning in saying that whatever the Leader of the Legislature Party directs must be regarded as that of the original political party."

(vii) "The reason is not far to seek. Disqualification of a member elected by the people is a very serious action and before that extreme step is taken, it should be proved that he acted contrary to the direction issued by the party which set him up as a candidate for election."

(viii) "In 'Hollohon's case the majority dealt with the expression 'any direction' in para 2 (1) (b) and held that the objects and purposes of the Tenth Schedule define and limit the contours of the meaning of the said expression. It is advantageous to extract para 122 (of Supp. SCC) : (*Para 49 of AIR)* of the judgment which reads as follows :

> "While construing paragraph 2(1) (b) it cannot be ignored that under the Constitution members of Parliament as well as of the State Legislatures enjoy freedom of speech in the House though

this freedom is subject to the provisions of the Constitution and the rules and standing orders regulating the Procedure of the House (article 105 (1) and article 194 (1). The disqualification imposed by paragraph 2 (1) (b) must be so construed as not to unduly impinge on the said freedom of speech of a member. This would be possible if paragraph 2 (1) (b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of Government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political party to which member belongs went to the polls. For this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(1) (b), would have to be limited to a vote on Motion of Confidence or No-confidence in the Government or where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate. The voting or abstinence from voting by a member against the direction by the political party on such a motion would amount to disapproval of the programme on the basis of which he went before the electorate and got himself elected and such voting or abstinence would amount to a breach of the trust reposed in him by the electorate."

(ix) "If the direction referred to in para 2 (1) (b) is to be restricted to the two kinds referred to in the said passage, there is no doubt that 'political party' in para 2 (1) (b) refers only to the 'original political party' as it is only such party which could issue such directions. In such matters, the members of the House would certainly be given sufficient notice in advance and original political party would have sufficient time to take decisions and issue directions. . ."

(x) "It has been rightly held by the Speaker that there is no material

whatever to hold that the direction issued on 20 October 1997 was issued by the BSP or that the appellant was authorised by the BSP to issue such a direction. Neither before the Speaker nor before us any such plea was even raised.

(xi) "There is also no difficulty in accepting the finding of the Speaker that the direction dated 20 October 1997 was not in accordance with the law laid down by this Court in Kihota Hollohon's case. In para 123 (of SCC) : (Para 49 of AIR), it is said":

> Keeping in view the consequences of the disqualification *i.e.*, termination of the membership of a House, it would be appropriate that the direction or whip which results in such disqualification under paragraph 2(1) (b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under paragraph 2(1) (b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction."

Mr. Sibal's contention that such a warning as mentioned in the above passage is necessary only when whips are issued on unimportant matters and that the above passage in 'Hollohon' is misunderstood by the Speaker is unsustainable. A reading of paras 122 and 123 (of Supp. SCC) : (Para 49 of AIR) in 'Hollohon' clearly shows that no meaning can be given to para 123 other than that given by the Speaker.

(xii) "Hence I hold that the Speaker has not violated para 2 (1) (b) of the Tenth Schedule."

(xiii) "The attack of the appellant on the factual findings of the Speaker could be more conveniently and appropriately considered when I discuss violation of natural justice and perversity. Under this head, I would discuss the question of law raised by Mr. Sibal."

(xiv) "The meaning to be given to the word 'split 912-13' in para 3 is left open in 'Hollohon'. In Para 124 (of Supp SCC.) : (para 50 of AIR), it is said :

> There are some submissions as to the exact import of a "split"– whether it is to be understood an instantaneous, one time event or whether a "split" can be said to occur over a period of time. The hypothetical poser was that if one-third of the members of a political party in the legislature broke away from it on a particular day and a few more members joined the splinter group a couple

of days later, would the latter also be a part of the 'split' group. This question of construction cannot be in vacua. In the present cases, we have dealt with constitutional issues. The meaning to be given to split must necessarily be examined in a case in which the question arises in the context of its particular facts. No hypothetical predictions can or need be made. We, accordingly, leave this question to be decided in an appropriate case.

(xv) "Issue No. 6 framed by the Speaker is as follows :

'Whether on 21 October 1997 a group was formed in Bahujan Samaj Party Legislature Party under paragraph 3 of Tenth Schedule of the Constitution representing the group which had arisen as a result of split in Bahujan Samaj Party and whether there were at least one-third members of Bahujan Samaj Party Legislature Party in such group? If yes, its effect.'

There is no dispute before us as to the correctness of the issue as framed. There is also no difference of opinion among the two sides as to the meaning of para 3.'

(xvi) "The only question of law raised by Mr. Sibal relates to the maintainability of the plea of split in default of compliance with Rule 3 of the Rules. According to the learned counsel, the Rules having been framed in exercise of the powers conferred by para 8 of the Tenth Schedule for giving effect to the provisions of the Schedule, have the same force as constitutional mandates and non-compliance thereof would disentitle the concerned party from invoking the provisions of the Constitution. . ."

(xvii) "Learned counsel submits that in the present case though the split was alleged to have taken place on 21 October 1997, Markandeya Chand, the leader of JBSP did not within thirty days from the said date or for that matter till 25 February 1998, the day on which the arguments before the Speaker were concluded furnish the statement etc. as set out in the Rule. Hence according to him the respondents were not entitled to raise the plea of split in this case."

(xviii) "According to him the decision of this Court in *Ravi S. Naik v. Union of India,* is not correct and it requires reconsideration. It is therefore argued that the order of the Speaker placing reliance on the said ruling is erroneous and has to be set aside."

(xix) "Before referring to Ravi S. Naik's case, I would consider the question on first principles. Para 3 of the Tenth Schedule excludes the operation

of para 2 (1) (a) and (b) where a member of a House makes a claim that he and any other member of his Legislature Party constitute the group representing faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such Legislature Party....."

(xx) "Now I shall advert to 'Ravi S. Naik's case. Both the learned Judges who decided the case were party to the majority judgment in 'Hollohon's case. It is too much to say that they had not properly understood their own dictum in 'Hollohon'. After referring to the provisions of the Tenth Schedule and the decision in 'Hollohon', the Bench dealt with the facts of each appeal separately. The Bench observed in C.A. 3390 of 1993 as follows :-

> The Disqualification Rules have been framed to regulate the procedure that is to be followed by the Speaker for exercising the power conferred on him under sub-paragraph (1) of paragraph 6 of the Tenth Schedule to the Constitution. The Disqualification Rules are therefore procedural in nature and any violation of the same would amount to an irregularity in procedure which is immune from judicial scrutiny in view of sub-paragraph (2) of paragraph 6 as construed by this Court in Kihota Hollohon case. Moreover, the field of judicial review in respect of the orders passed by the Speaker under sub-paragraph (1) of paragraph 6 as construed by this Court in Kihota Hollohon case is confined to breaches of the Constitutional mandates, *mala fides*, non-compliance with rules of natural justice and perversity. We are unable to uphold the contention of Shri Sen that the violation of the Disqualification Rules amounts to violation of Constitutional mandates. By doing so we would be elevating the rules to the status of the provisions of the Constitution which is impermissible. Since the Disqualification Rules have been framed by the Speaker in exercise of the power conferred under paragraph 8 of the Tenth Schedule they have a status subordinate to the Constitution and cannot be equated with the provisions of the Constitution. They cannot therefore be regarded as constitutional mandates and any violation of the Disqualification Rules does not afford a ground for judicial review of the order of the Speaker in view of the finality clause contained in sub-paragraph (1) of

paragraph 6 of the Tenth Schedule as construed by this Court in Kihota Hollohon case."

(xxi) "Again in Civil Appeal 2904 of 1993, the Bench dealt with paras 2 and 3 of the Tenth Schedule and said :

As noticed earlier paragraph 2 of the Tenth Schedule provides for disqualification on the ground of defection if the conditions laid down therein are fulfilled and paragraph 3 of the said Schedule avoids such disqualification in case of split. Paragraph 3 proceeds on the assumption that but for the applicability of the said provision the disqualification under paragraph 2 would be attracted. The burden to prove the requirements of paragraph 2 is on the person who claims that a member has incurred the disqualification and the burden to prove the requirements of paragraph 3 is on the member who claims that there has been a split in his original political party and by virtue of said split the disqualification under paragraph 2 is not attracted. In the present case Naik has not disputed that he has given up his membership of original political party but he has claimed that there has been a split in the said party. The burden, therefore, lay on Naik to prove that the alleged split satisfies the requirements of paragraph 3. The said requirements are :

(i) The member of a House should make a claim that he and other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original party ; and

(ii) Such group must consist of not less than one-third of the members of such legislature party.

In the present case the first requirement was satisfied because Naik has made such a claim. The only question is whether the second requirement was fulfilled. The total number of members in the Legislature Party of the MGP (the original political party) was eighteen. In order to fulfil the requirements of paragraph 3, Naik's group should consist of not less than 6 members of the Legislature Party of the MGP. Naik has claimed that at the time of split on 24 December 1990 his group consisted of eight members whose signatures are contained in the declaration, a copy of which was filed with the reply dated 13 February 1991.

The Speaker has held that the split had not been proved because no intimation about the split has been given to him in accordance with Rules 3 and 4 of the Disqualification Rules. We find it difficult to endorse this view. Rule 3 requires the information in respect of matters specified in clauses (a) (b) and (c) of sub-rule (1) to be furnished in the prescribed form (Form 1) to the Speaker by the leader of the Legislature Party within 30 days after the first sitting of the House or where such Legislature is formed after the first sitting within 30 days after its formation. Rule 4 relates to information to be furnished by every member to the Secretary of the Assembly in the prescribed form (Form III). In respect of a member who has taken his seat in the House before the date of commencement of the Disqualification Rules, the information is required to be furnished within 30 days from such date. In respect of a member who takes his seat in the House after the commencement of the Disqualification Rules the information is required to be furnished within 30 days from such date. In respect of a member who takes his seat in the House after the commencement of the Disqualification Rules such information has to be furnished before making and subscribing an oath or affirmation under article 188 of the Constitution and taking his seat in the House. Rule 4 has no application in the present case because the stage for furnishing the required information had passed long back when the members made and subscribed to oath and affirmation after their election in 1989. Rule 3 also comes into play after the split and the failure on the part of the leader of the group that has been constituted as a result of the split does not mean that there has been no split. As to whether there was a split or not has to be determined by the Speaker on the basis of the material placed before him. In the present case the split was sought to be proved by the declaration dated 24 December 1990 whereby eight MLAs belonging to the MGP declared that they had constituted themselves into a group known as Maharashtrawadi Gomantak Party (Ravi Naik Group). A xerox copy of the said declaration was submitted along with the reply filed by Naik on 13 February 1991 and the original declaration bearing the signatures of the eight MLAs was produced by the Advocate for Naik during the course of the hearing before the Speaker on 13 February 1991. The genuineness of the signatures on the said declaration was not disputed before the Speaker . One of the signatories of the declaration, namely, Dharma Chodankar, had written to the Speaker that his signatures

were obtained forcibly. That may have a bearing on the number of members constituting the group. But the fact that a group was constituted is established by the said declaration."

With respect, I express my whole -hearted agreement with the reasoning. The ruling does not at all require re-consideration. The contention of the appellant is therefore rejected. I hold that the Speaker has not violated any of the constitutional mandates."

(II) Violation of Principles of Natural Justice

(xxii) "Under this head, the argument of the appellant relates to two affidavits filed on 25 February 1998, six on 4 March 1998 and one on 10 March 1998. The two affidavits filed on 25 February 1980 were that of Narinder Singh and Markandeya Chand. They were presented when the arguments were proceeding. The same was objected to by the counsel who was appearing for the appellant before the Speaker on the ground that they had been filed after 9 February 1998 which was the last day to produce evidence. In the copy of the proceedings dated 25 February 1998, the following statement is found:–

"Whether the above affidavits be placed on record and be read in evidence or not will be considered presently during arguments".

According to the appellant, the Speaker did not pass any order thereafter to take the affidavits on record but he relied on them in his order and thus violated the principles of natural justice as the appellant had no opportunity to controvert the averments in the affidavits.

(xxiii) "In the S.L.P. a ground is raised that the averment in the order of the Speaker that the appellant's counsel said that he would not file any reply to the affidavits is factually incorrect. But there is no denial whatever in the SLP of the averment that during the course of arguments Shri Umesh Chandra referred to some paragraphs of that affidavit also to contend that there was no division of the BSP. No argument was also advanced before us challenging the correctness of that averment. When the appellant's counsel had himself relied on portions of the affidavits filed on 25 February 1998, there is no substance in the contention that the Speaker had taken them on record behind the back of the appellant. There is also no substance in the contention that the appellant had no opportunity to controvert the contents of those affidavits. On the very same day 25 February 1998 the appellant filed an application and affidavits of nine

MLAs at 7.40 P.M. She could have then said whatever she wanted to say about the contents of the affidavits filed by the respondents. It is not the case of the appellant that Speaker did not permit her to file any affidavit in reply to the said affidavits of the respondents. The only objection to the reception of the affidavits in question was that it was filed after the expiry of the time granted earlier to file a list of members of BSP. The appellant was represented by practising lawyers who knew very well that the Speaker had ample powers to condone the delay in filing the affidavits. In the proceedings of 25 February 1998 it is stated towards the end that "learned counsel for the two sides had made their submissions on factual and legal aspects". It is not the case of the appellant that any argument with reference to the said affidavits was shut out. Moreover the contents of the affidavits filed on 25 February 1998 are almost a repetition of the contents of the additional Written Statement filed on 2 February 1998 plus the two annexures containing the names of 26 members who formed the group of JBSP on 21 October 1997 and 18 members who continued in the group till then besides a plea of split within split. I do not find any violation of the principles of natural justice in the Speaker's taking on record the two affidavits filed by the respondent on 25 February 1998.

(xxiv) The other affidavits said to have been taken on record without notice to the appellant were filed on 4 March 1998 and 10 March 1998. According to the respondents those affidavits were filed in reply to the nine affidavits filed by the appellant on 25 February 1998 at 7.40 P.M. According to them, the appellant filed them without serving copies on them and they had to obtain copies from the office of the Speaker on 27 February 1998. It is stated by the appellant that the affidavits filed on her behalf were presented before the Speaker in the course of arguments in the presence of counsel for the parties. The proceedings of the Speaker dated 25 February 1998 do not make any reference to the said affidavits. The endorsement on the margin of the application of the appellant dated 25 February 1998 and the affidavits filed therewith prove that they were filed in the office of the Secretary to the Speaker at 7.40 p.m. and on the same day the speaker has made an endorsement in the margin directing the placing of the application and affidavits on record. Whatever it may be it is not the case of the appellant that copies of those affidavits were served on the respondents or their counsel. There is no record to prove such service.

(xxv) "An objection is taken before us in the course of arguments that R.K. Chaudhary never represented the appellant in the proceedings before the Speaker and notice to him will not amount to notice to the appellant. No such ground has been taken in the S.L.P. There is no denial in the S.L.P. of the averment found in the order of the Speaker that R.K. Chaudhary was looking after the petitions of the appellant. Without challenging the correctness of the statement in the S.L.P., it is not open to counsel for the appellant to raise the contention for the first time in the course of his arguments. In the order of the Speaker dated 7 November 1997 it is stated that R.K. Chaudhary, MLA and D.R. Verma, Ex-Chairman Legislative Assembly came and produced two letters of the appellant before the Speaker which shows that R.K. Chaudhary did represent the appellant in these proceedings. In fact he filed petitions for disqualification only on 11 November 1997 and those petitions were nothing but repetition of the petitions filed by the appellant. In the circumstances it is not possible for this Court to say that the averment made by the Speaker in his order that R.K. Chaudhary was looking after the petitions filed by the appellant is not correct."

(xxvi) "While I am unable to accept the factual contention that the appellant had no opportunity to controvert the affidavits filed before the Speaker on 25 February 1998, 4 March 1998 and 10 March 1998, I am of the opinion that even so there is no violation of the principles of natural justice. . ."

(xxvii) "It has not been proved by the appellant that there is a failure of substantial justice. In the absence of bias and *mala fides*, the contention that the order of the Speaker is vitiated by violation of principles of natural justice has to fail."

(III) Perversity

(xxviii) "One of the contentions urged under this head is that the Speaker has by unduly delaying the proceedings acted perversely. Though learned senior counsel stated expressly in the course of his arguments that he is not alleging bias or personal *mala fides* against the Speaker, in the written submissions given by him it is stated as follows :

"The Hon'ble Speaker by not deciding the petitions expeditiously and by allowing the BJP time to garner support for the purposes of the defence of the respondents under paragraph 3 has acted contrary to the

Constitutional mandate."

"The said submission is not permissible in view of the statement expressly made and referred to above. In any event, merely because there is a delay in concluding the hearing, the order cannot be said to be perverse. The Speaker has framed the question properly as to whether a split as alleged by the respondents had taken place on 21 October 1997 and whether it was supported by acceptable evidence. This Court in exercise of its power of limited judicial review has only to see whether the findings arrived at by the Speaker are perverse in the sense in which the expression 'perversity' has been understood by this court in several decisions. I am unable to accept that as a matter of law, delay in the completion of proceedings would by itself vitiate the order passed by him."

(xxix) "But I wish to add that it is absolutely necessary for every Speaker to fix a time schedule in the relevant Rules for disposal of the proceedings for disqualification of MLAs or MPs. In my opinion all such proceedings shall be concluded and orders should be passed within a period of three weeks from the date on which the petitions are taken on file".

(xxx) "Before considering the relevant findings of the Speaker which are said to be perverse by the appellant, it is better to refer to the rulings which define perversity."

(xxxi) "As pointed out already in Kihota Hollohon's case the Constitution Bench has laid down that the power of judicial review *vis-a vis* the order of the Speaker under paragraph 6(1) of the Tenth Schedule is confined to jurisdictional errors only based on violation of constitutional mandate, *mala fides*, non-compliance of rules of natural justice and perversity. . ."

(xxxii) The Speaker in his order has taken note of the following circumstances for accepting the case of the respondents.

(i) Markandeya Chand announced on the floor of the Assembly on 21 October 1997 that under his leadership 23 MLAs got separated from BSP and they formed one group. This was not controverted by the appellant or the other members of BSP.

(ii) In spite of such announcement, the petition filed by the appellant on 24 October 1997 did not invoke paragraph 2 (1) (a) of the Tenth Schedule for disqualifying the respondents. There was no mention whatever about the split announced in the Assembly.

(iii) In the petitions filed by R. K. Chaudhary on 11 November 1997

the position was the same. There was no reference to the split announced in the Assembly.

(iv) On 13 November 1997 applications were filed for amendment of the petitions which were allowed by the Speaker but there was no reference in these applications either to the split or to paragraph 2(1) (a) of the Tenth Schedule.

(v) On 25 November 1997 the respondents filed the written statement in which it was stated that a split had occurred as a result of which there was more than one-third of the BSP legislators under the leadership of Markandeya Chand. On 26 November 1997 the appellant filed a reply/rejoinder. There was no denial of the split referred to in the written statement of the respondents.

(vi) On 5 December 1997 applications for amendment of the petitions were filed in which there was only a denial of correctness of the statement made by Markandeya Chand in the Assembly that 23 legislators of BSP were with him. In paragraphs 7A and 7B of the petitions which were introduced by the said amendment there was no dispute of the factum of split pleaded by the respondents.

(vii) On 2 February 1998 an additional written statement was filed by Vansh Narain Singh setting out the facts relating to the split and formation of JBSP. There was also a reference to the threat caused by the appellant to JBSP members and the fact that they were prevented from going to Lucknow. There was also an allegation that signatures were taken on blank papers from such members. The averments in the additional written statement were never controverted.

(viii) The affidavits filed by the appellant on 25 February 1998 were sworn to in November, 1997. There was no explanation for the same. Three of the affidavits were contradicted and controverted by the deponents thereof. The stamp papers on which the affidavits had been prepared were issued on the same day and the names of the persons to whom the stamp papers were issued were not written by the stamp vendor.

(ix) The list of persons who joined JBSP on 21 October 1997 was for the first time disclosed on 25 February 1998 only but the appellant had obtained affidavits from nine of them in November 1997 itself. That shows that the appellant knew that those nine MLAs were at

that time in the group led by Markandeya Chand.

(x) The video cassettes and other records filed in the case revealed that the appellant had instigated violence in the Assembly on 21 October 1997 and disrupted the proceedings. That itself probabilises the version that the MLAs who supported the respondents were kept under threat by the appellant and prevented from going to Lucknow for some time. The matter is one of oath against oath and the affidavits filed by the respondents and the other evidence produced by them were acceptable."

(xxxiii) "All the above circumstances referred to and relied on by the Speaker are quite relevant and germane for deciding the issue whether there was a split on 21 October 1997 and whether the group led by Markandeya Chand had not less than one-third members of the BSP Legislature Party".

(xxxiv) "Apart from this, the Speaker has considered the various facts relied on by the appellant and discussed the same. According to the appellant the following are the facts which would disprove the case of the respondents:

(a) That a claim was made by Markandeya Chand in the Assembly that he had 23 BSP MLAs along with him who got separated but the respondents who are 12 in number were the only members of the BSP who had voted in support of the Motion of Confidence on that day.

(b) Those 12 persons became Ministers on 27 October 1997.

(c) In spite of several opportunities having been given and in spite of expiry of the time finally granted till 9 February 1998, the respondents did not disclose the names of the members of the JBSP who were said to be 26 in number.

(d) When the list was given on 25 February 1998 there were only 17 members in all in JBSP.

(e) The respondents have not complied with the mandatory provisions of Rule 3 of the Rules in spite of extension of time granted by the Speaker."

(xxxv) "All the above circumstances relied on by the appellant have been referred to and discussed in detail by the Speaker in his order. If any of them had been ignored, It could be said that his order is vitiated. But that is not the case here. When there is no bias or *mala fide*, the acceptance of one party's statement of facts and rejection of the other cannot be canvassed before this Court."

(xxxvi) "The appellant's counsel argued that the Speaker is in error in proceeding on the basis that the averments in the affidavits filed on 25 February 1998 on behalf of the respondents were not controverted by the appellant and the Speaker has overlooked that in the application filed by the appellant on 25 February 1998 along with nine affidavits they have been specifically controverted. It is also argued that the Speaker is in the wrong in rejecting the affidavits of the MLAs filed by the appellant on the ground that they were sworn in in November 1997 on different dates. It is submitted by learned counsel that the appellant started collecting such affidavits from all the members of the BSP from 6 November 1997 after the respondents claimed that they had 24 members in their group and that she could get them only when the concerned MLAs were available in Lucknow."

(xxxvii) "The above arguments are fallacious. The first of them negatives the other plea of the appellant that no opportunity was given to her to controvert the averments in the affidavits of the respondents filed on 25 February 1998. It is already seen that the relevant averments were all made in the additional written statement filed on 2 February 1998 and the appellant did not file any reply thereto. The averments setting out the reason for the split in the party on 21 October 1997 and the averments describing the way in which the appellant kept the MLAs under threat and forced them to sign blank papers were never controverted. That is a crucial circumstance relied on by the Speaker and he cannot be faulted therefor. The Speaker has drawn an inference that the appellant knew that the nine MLAs whose affidavits were filed by her on 25 February 1998 were members of the group of the respondents when it was formed on 21 October 1997 and that is why she got affidavits from them in November 1997 by force. In the S.L.P. the said inference of the Speaker has not been traversed. There is no averment in the S.L.P. or any other record that the appellant got affidavits from November 1997 onwards of all the MLAs who continued to be in the BSP. In the absence of any such record, an argument advanced by the counsel at the fag end of the arguments cannot be accepted."

(xxxviii) "The reasoning of the Speaker is in the following passages :–

The affidavits of the respondents thus remain uncontroverted and there is nothing on the record to disbelieve them. On the other hand, the statements made on oath in the respondents' affidavits are corroborated by the following materials on the record :

(i) Statement of Shri Sardar Singh made on the floor of the House on 21 October 1997 while speaking on the Motion of Confidence. The petitioners have not filed any evidence to controvert the statement of Shri Sardar Singh, which was made on the first available opportunity.

(ii) Admission in paragraph 3 of the nine affidavits filed on behalf of the respondents that there was anarchy in the House on 21 October 1997. These affidavits have been sworn in in the month of November 1997 and are totally silent on the points of Ms. Mayawati's direction given on 21 October 1997.

(iii) Video cassettes recording the proceedings dated 21 October 1997 of the House unmistakably, and with prominence, show Ms. Mayawati instigating, exhorting and directing the BSP MLAs sitting behind her and on her side, to come to the Well of the House and create disturbance. It may be noticed the Speaker was being attacked by BSP MLAs and other opposition MLAs by suing (*sic*) wooden loud Speaker box, microphones etc. The video cassettes of Enadu, BI, Zee, ANI TV channels may be referred to in this behalf. These cassettes are on the record. Still photographs taken from some of the video cassettes have also been placed on the record.

(iv) The fact that violence was committed, and disturbance created, in the House at the instance of Ms. Mayawati and some other opposition MLAs immediately after the recital of *'Vande Mataram'* was over and the Speaker was attacked. This is precisely what Ms. Mayawati had directed her MLAs to do on 21 October 1997.

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The video cassettes clearly show that Ms. Mayawati instigated and abetted the commission of violence in the House on 21 October 1997 in which microphones, table tops and sound boxes were pulled up from the legislators' and reporters' table and used for assaulting the Speaker and others. Their acts are criminal in nature. Abetment of these acts is also a crime. There is *prima facie* evidence in the present petitions to show that Ms. Mayawati is guilty of this offence.

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Now it is to be seen as to whether as a matter of fact a faction had arisen as a result of split in the BSP and the respondents have made a claim that they and other members of the BSP Legislature Party had constituted a group representing that faction.

Paragraph 11 of the affidavits of Shri Vans Narain Singh and other respondents filed on 2 February 1998 clearly states that in the background of directions given by Ms. Mayawati to the BSP MLAs when they had sat in the cars for coming to the Assembly, these respondents and other MLAs of the BSP, whose number was not less than one-third of the total number of the BSP MLAs sat in the lobby, discussed the matter and at that very moment there was a split amongst the BSP MLAs and these members of the BSP, who separated from the BSP, formed a separate group under the leadership of Shri Markandey Chand and that the number of such members was not less than one-third of the BSP members. It is further averred that it was not possible for them to remain members of the BSP any more and that the fact was stated by Shri Markandey Chand in the House on 21 October 1997. Paragraph 12 of the said affidavits further state that as was apparent from the statement of Shri Markandey Chand there was a split in the BSP and there were 23 members (MLAs) after that split with him and this became a separate group. The timing of the split was given before the Speaker came to the sitting of the House on 21 October 1997.

The averments in these affidavits are corroborated by the statement of Shri Markandeya Chand given on the floor of the House on 21 October 1997 which was read in evidence by agreement of parties.

The petitioners did not file any reply to the said affidavits.

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(xxxix) "There is no sufficient reason to disbelieve the averments in these affidavits. They have been corroborated in material particulars by circumstance and other material on record. The reason given for splitting the BSP has been found to be true as it is supported by the actual happening of violent events in the House on 21 October 1997 which took place at the active instigation, exhortation and abetting of Ms. Mayawati herself. The video cassettes and the news reports of the proceedings of the House of 21 October 1997 further support this. Then the statement of Shri Sardar Singh about the split and its cause and Shri Markandey Chand's statements about the split both made on the first available opportunity on the floor of the House on 21 October

1997 itself are there. Shri Markandey Chand informed the House of the fact of split in BSP by 23 MLAs under his leadership.

Another fact which supports the case of the respondents is that, apart from the respondents, there were many BSP MLAs who did not participate in the disorder or violence in the House. The respondents say that they were those who were in the group of BSP MLAs causing split. This fact of non-participation of several BSP MLAs in disorder or violence is corroborated by the video cassettes."

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"Further, the petitioners counsel had stated on 26 November 1997 that he did not propose to file any documentary evidence except those filed with the Petitions. These affidavits have been suddenly produced on 25 February 1998 when Chaudhary Narendra Singh and Shri Markandey Chand filed their affidavits disclosing the names of 26 MLAs and further setting up the case of split within split. The contents of these affidavits are not supported by events of 21 October 1997. There is no reason why their recent affidavits were not filed. In fact they do create a suspicion in the mind that they had been obtained by the petitioners under threat as alleged by the respondents."

(xl) There is not even an attempt to explain any of the above features relied on by the Speaker for rejecting the nine affidavits filed by the appellant on 25 February 1998. Nor is there any argument against the reliance placed by the Speaker on the video tapes showing how the appellant instigated the MLAs to resort to violence and disturb the proceedings in the Assembly on 21 October 1997. The question before this Court is not whether on the facts and circumstances of the case there was a split as alleged by the respondents on 21 October 1997 but the question is whether the conclusion arrived at by the Speaker after taking note of all the aforesaid circumstances for and against the respondents is so unreasonable or absurd or perverse that he must have taken leave of his senses. The Speaker has not left out any relevant material from consideration: nor has he referred to any irrelevant matter. In the facts and circumstances of this case it cannot be said that no reasonable or sensible person who had applied his mind to the question to be decided could have arrived at the findings given by the Speaker. It should not be forgotten while dealing with this questions of perversity that according to the appellant's counsel there was no bias or *mala fide* on the part of the Speaker. If the materials on record are considered on that basis it can at best be said that, if at all,

two conclusions were possible and the Speaker has chosen one of them. In the circumstances I do not find any perversity in the findings rendered by the Speaker. It is worth recalling the observations of Lord Fraser of Tullybelton in *Re Amin.* (1983) 2 All ER 864 at page 868, that Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made ... Judicial review is entirely different from an ordinary appeal".

(li) The Speaker has considered the question of split within split alleged to have taken place in JBSP. It is unnecessary for the purpose of this case to go into that question. Such a subsequent split in JBSP is referred to by the respondents only for the purpose of explaining how there were only 19 members in that group on 25 February 1998. The only relevant question is whether there was a split on 21 October 1997 and the group which got separated from the BSP consisted of not less than one-third members of the BSP Legislature Party. That question having been answered in favour of the respondents, it is not necessary to go into the question whether there was a further split in JBSP and if so, the effect thereof. After considering the materials on record, I am of the opinion that the findings arrived at by the Speaker are not vitiated by perversity.

(lii) In the view I have taken, it is not necessary for me to consider the question whether this Court should decide the entire matter here in the event of setting aside the order of the Speaker or remand the matter for fresh disposal by the Speaker in accordance with the judgment of this Court. For the sake of completion, I wish to express my opinion on that question too. If the order of the Speaker is to be set aside, I am of the view that the matter should go back to the Speaker for fresh decision. It is not the function of this Court to substitute itself in place of the Speaker and decide the questions which have arisen in the case.

(liii) When the Tenth Schedule has expressly constituted the Speaker or the Chairman as the case may be to decide the question of disqualification and attach finality thereto, it is not for this Court to consider the facts and decide the said question by substituting itself in the place of the Speaker. If the order of the Speaker is set aside on any of the grounds mentioned in 'Hollohon's case by exercising the power of limited judicial review the consequential course to be adopted is to leave the matter Speaker to decide afresh in accordance with law.

Conclusion

(liv) The Speaker has found on the basis of the record that the appellant instructed the members of the BSP to indulge in violence and disrupt the proceedings in the Assembly on 21 October 1997. It is also found that the allegations made by the respondents that the members of the JBSP were kept under threat by the appellant and prevented from entering Lucknow. In view of such finding also which is supported by records, the discretionary jurisdiction under article 136 of the Constitution should not be exercised in favour of the appellant.

For all the above reasons this appeal deserves to be and is hereby dismissed. Order accordingly.

Chief Justice M.M. Punchhi in his judgment held as follows :

PUNCHHI, D.J.I. : - I have bestowed great care in reading the two elaborate but sharply cleaving draft judgments prepared by my learned brethren, K.T. Thomas, J, and M. Srinivasan, J. resting on the provisions contained in the Tenth Schedule of the Constitution. I need to emphasise at the outset, in the context above, the importance of recording of events which take place in the House, which means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State, because clause (b) of paragraph 3 provides that from the time of such split, such faction shall deemingly become the political party ...The Speaker/Chairman in the nature of his role when informed of a split is administratively the time-keeper and he has to be definite in respect of the time of such split. Or is there any scope for procrastination? He is the Tribunal undoubtedly for quasi-judicial purpose. In Kihota Hollohon's case the majority, in paragraph 109, has summed up the nature of the function exercised by the Speaker/Chairman under paragraph 6 (1) to be that of a Tribunal and the scope of judicial review under articles 136, 226 and 227 of the Constitution in respect of an order passed by the Speaker/Chairman under paragraph 6 to be confining to jurisdictional errors only *viz.*, infirmities based on violation of constitutional mandate, *mala fides*, non-compliance with rules of natural justice and perversity. The question, however, as to whether a member of the House has become subject to disqualification must arise for decision under paragraph 6 (1) of the Tenth Schedule only on its being referred for decision of the Speaker/Chairman and not on his own, whose decision

shall be final. The defence against disqualification incurred on ground of defection under paragraph 2 is separately provided in paragraph 3 to say that such disqualification is not to apply to a case of split. Is not the cognition of the Speaker/Chairman of the occurrence of split not administrative in nature, unconnected with decision making on disqualification, or is it an adjunct thereto? Kihota Hollohon is silent on this aspect. If the act of cognising the time of such split is the administrative function of the Speaker/Chairman, the scope of judicial review of the said administrative act would, to my mind, be qualitatively different than what it is when testing his quasi-judicial order as a Tribunal Kihota Hollohon, as is evident from paragraph III of the Report, apparently confines to decision-making by the Speaker/Chairman in paragraph 6 (1) on reference of the question of disqualification, inviting his decision, and leaves his role under paragraph 3 untouched. These determinations of importance, in my view, are necessary to be made before the matter can be examined as to the perversity or otherwise of the Speaker's decision, obligating him at a point of time to record categorically when the split took place thereby pinning "the time of such split." I opine therefore that the matter be referred to the Constitution Bench for decision.

D. AN ANALYTICAL STUDY

D. An Analytical Study

The operation of the Anti-defection Law over the years has thrown up some complex problems which are closely interlinked with dynamics of the Indian polity. For a better understanding of the working of the law, the cases under the Anti-defection Law in Parliament and State Legislatures, and decisions by various Presiding Officers, need to be critically analysed. The theme wise analysis of case law, highlighting the topical points that arose in different cases together with judicial pronouncements on points of law, is given below.

Voluntarily giving up membership of party

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

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

In Lok Sabha, of the 39 petitions for disqualification filed so far, in 21 petitions, disqualification of members was sought under para 2(1)(a) of the Tenth Schedule whereas in 18 petitions, disqualification of members was sought under para 2(1)(b) of the Tenth Schedule. In two cases namely ,Janata Dal (S) [Ninth Lok Sabha] and Janata Dal (Tenth Lok Sabha), petitions for disqualification of members were filed both under paras 2(1)(a) and 2(1)(b) of the Tenth Schedule. In Janata Dal (A) case (Tenth Lok Sabha), the petitioner, Shri Ajit Singh in his composite petition for disqualification, sought disqualification of six out of seven respondents under para 2(1)(b) and in his alternative plea sought disqualification of all the seven respondents under para 2(1)(a). It may thus be seen that in Lok Sabha disqualification of members was sought more under para 2(1)(a) rather than para 2(1)(b).

Incidentally, in the first ever petition for disqualification under the Tenth Schedule in the Lok Sabha, given by Shri K.P. Unnikrishnan during the Eighth Lok

Sabha in 1987, disqualification of respondents was sought under para 2(1)(a) of the Tenth Schedule. This petition was, however, dismissed by the Speaker, Dr. Bal Ram Jakhar.

The first case in the Lok Sabha where a member was disqualified from the membership of the Lok Sabha, was on the ground of his voluntarily giving up the membership of his original political party. In 1987, (Eighth Lok Sabha), a petition was given by a member, Shri Ram Pyare Panika against another member, Shri Lalduhoma for having given up the membership of his original political party *viz.*, Indian National Congress. The main allegations against Shri Lalduhoma were that he had formed a new party *viz.* Mizoram Congress for Peace (which later on amalgamated with the Mizoram National Union Party) and contested the elections to the Mizoram Legislative Assembly in 1987, as an independent candidate set up by the Mizoram National Union Party against the official candidate of Indian National Congress. It was contended that the respondent's acts and conduct implied that he had voluntarily given up membership of the Indian National Congress. The respondent, however, took a plea that he had never resigned from the party and even after his expulsion from the party he had been paying subscription for the membership of the party. The Committee of Privileges (Eighth Lok Sabha) to which the matter was referred for preliminary inquiry by the Speaker had the occasion to consider the implication of the term 'voluntarily giving up membership'.

In this context, the Committee of Privileges observed:-

> "The Committee have also considered as to what amounts to voluntarily giving up of membership of a political party by a member. The Committee notes that the words used in paragraph 2(1)(a) of the Tenth Schedule are : 'If he has voluntarily given up his membership of such political party' and not 'if he has voluntarily resigned from such political party'. The Committee feel that the use of words 'voluntarily given up' is very significant..... To insist that a letter of resignation to the competent authority, voluntarily tendered would alone disqualify would be placing too narrow an interpretation on the constitutional provision and would in fact negate the very objective which Parliament had in mind while enacting the Constitution (Fifty-second Amendment) Act and that such an interpretation would lead to gross circumvention of the provisions of the Tenth Schedule.
>
> The Committee are convinced that it was with a view to obviating such situations that the words 'voluntarily given up' were used in paragraph 2(1)(a). As the law does not define the precise manner in which the membership is to be given up, the words have to be interpreted according to the spirit in which

they have been used in the Act. The intention of the law-makers is quite clear: that it is not only by the overt act of tendering his resignation but also by his conduct that a member may give up the membership of his political party. The Committee are of the view that if a member by his conduct makes it manifestly clear that he is not bound by the party discipline and is prepared even to wreck it by his conduct, he should be prepared to pay the price of losing his seat and seeking re-election."

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

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

In State Legislatives Assemblies, in 78 cases petitions were given under para 2(1)(a) of the Tenth Schedule. The maximum number of petitions under para 2(1)(a) of the Tenth Schedule have been in the State of Haryana.

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

In this context, the case* of Sanjay Bandekar and Ratnakar Chopdekar in Goa Legislative Assembly is very pertinent. In 1991, on separate petitions being given against *Sarvashri* Ravi S. Naik, Sanjay Bandekar and Ratnakar Chopdekar, the Speaker, Goa Legislative Assembly declared all the three members as

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* For summary of case pl. see Chapter 4A

disqualified from the membership of Goa Legislative Assembly on ground of their voluntarily giving up membership of their original political party in terms of para 2(1)(a) of the Tenth Schedule. In this case, there was no resignation but the members had accompanied an Opposition leader for meeting the Governor, and as such, their act was termed as giving up the membership of their party. The writ petitions filed by the members against the orders of the Speaker were dismissed by the High Court of Bombay. The member then moved the Supreme Court.

The Supreme Court in their judgment* *inter alia* observed as follows :-

> ... The words 'voluntarily given up his membersip' are not synonymous with 'resignation' and have a wider connotation. A person may voluntarily give up his membership of a political party even though he has not tendered his resignation from the membership of that party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.

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

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

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

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** For Judicial Pronouncements pl. see Chapter 4 C.

* For Judicial Pronouncements pl. see Chapter 4 C.

Shri Raju, the inference was clear that he had voluntarily given up his membership of TDP, thereby attracting provisions of para 2(1)(a) of the Tenth Schedule.

The petition however became infructuous with the dissolution of the Twelfth Lok Sabha on 26 April 1999.

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

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

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

> "...the core term 'defection', has not been defined either in the Tenth Schedule or the Rules made thereunder. The Committee note that various ingenious methods of defections may be resorted to by members. Some such instances which have come to the notice of the Committee were:-
>
> (a) members openly working against the party interests, while being within the party;
>
> (b) members joining the Council of Ministers of some other political formations; and
>
> (c) members speaking out against the policies of its original political party

* Report was adopted by the Conference on the same day

> or voicing support to policies of another political party, without resigning from membership of their original political parties."

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

Violation of party whip/direction

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

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

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

> So far as the right of a member under article 105 is concerned, it is not an absolute one and has been made subject to the provisions of the

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* For summary of case pl. see Chapter 4 A.

** For Judicial Pronouncements pl. see Chapter 4 C.

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

The Supreme Court had the occasion to dwell upon the aspect of the interpretation of provisions of para 2(1)(b) of the Tenth Schedule in the Kihota Hollohan *Vs.* Zachilhu & Others (AIR 1993, S.C. 412)*. The Supreme Court in this case held that the words "any direction" in para 2(1)(b) require to be construed harmoniously with other provisions and appropriately confined to the objects and purposes of the Tenth Schedule. The Court further held that for this purpose the direction given by the political party to a member belonging to it, the violation of which may entail disqualification under paragraph 2(1)(b) would have to be limited to a vote on motion of Confidence or No Confidence in the Government or, where the motion under consideration relates to a matter which was an integral policy and programme of the political party on the basis of which it approached the electorate.

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

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* For Judicial Pronouncements pl. see Chapter 4 C.

The Law Commission of India under the Chairmanship of Justice B.P. Jeevan Reddy, in their 170th Report on 'Reform of the Electoral Laws' submitted to the Government of India in May, 1999, dwelt on the aspect of desirability of issuing the whip in specific situations only and observed:-

> So far as the issuance of the whip is concerned, it is not governed by any law. Neither the Rules framed under the Tenth Schedule nor the Rules of Procedure and Conduct of Business in the Lok Sabha/Council of States provide for or regulate the issuance of whip. It appears to be a matter within the discretion and judgment of each political party. In such a situation, we can only point out the desirability aspect and nothing more. It is undoubtedly desirable that whip is issued only when the voting in the House affects the continuance of the Government and not on each and every occasion. Such a course would safeguard both the party discipline and the freedom of speech and expression of the members.

Splits and mergers

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

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

In State Legislatures, there have been 75 claims for splits and 88 claims for mergers.

Engineering splits to facilitate mergers

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

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

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

Another point that was raised in the above case was whether the outgoing Speaker of a dissolved Assembly, who was also defeated in the election to the next Assembly, could accord recognition to a split claimed by the elected members of the new Assembly. Incidentally, notification for constitution of the Seventh Manipur Legislative Assembly and dissolution of the Sixth Assembly were issued on 1 March 2000. On 4 March 2000, the respondent, Shri Thangminten Kipgen claimed a split in the Nationalist Congress Party (NCP). Interestingly, the intimation regarding the above split was forwarded to the Speaker of the outgoing Sixth Assembly who took

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* For summary of case pl. see Chapter 4 A.

cognizance of the split *vide* his order dated 6 March 2000. Later, when the competence of the outgoing Speaker in deciding the petition was challenged *vide* disqualification petition dated 19 June 2000, the Speaker of the Seventh Assembly responded to this point in negative. He opined that the outgoing Speaker had no legislative or parliamentary authority under the Constitution of India in respect of the new House. He further added that since the outgoing Speaker had ceased to be the authority, he had no jurisdiction or competence to accord recognition to the split claimed by the members of the new House.

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

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

Expulsions and status of unattached members

Before coming into force of the Constitution (Fifty-second Amendment) Act, 1985, and the rules framed thereunder, it was an established practice in Lok

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* For summary of case pl. see Chapter 4 A.

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

During the Tenth Lok Sabha, however, the Speaker (Shri Shivraj V. Patil) in his decision in the Janata Dal case adopted a different approach and observed:-

> In the past, in some cases, when the Members were expelled, they were called unattached, to distinguish them from the party Members as well as from the independent Members. The word 'Unattached' is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament.

In this context it would be pertinent to note the following observations made by the Supreme Court of India in G. Viswanathan *Vs.* Speaker, Tamil Nadu Legislative Assembly and Azhagu Thirunavakkarasu *Vs.* Speaker, Tamil Nadu Legislative Assembly (1996 2 SCC 353) cases:-

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

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* For details of case pl. see Annexure E.

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

However, the inability of an expelled member in finding adequate time for participating in debates of the House and in being nominated to the Committees, consequent upon his expulsion, tend to deprive his constituents of their right of being represented properly in the House. An expulsion of a member from his political party in a way affects the member's constituents whom he represents in the Legislature. It was in this context that the Committee of Presiding Officers of Legislative Bodies in India on the need to review the Anti-defection Law under the Chairmanship of Shri Hashim Abdul Halim, Speaker, West Bengal Legislative Assembly, in their Report presented to the 66th Conference of Presiding Officers at Mumbai on 5 February 2003 had *inter alia* recommended the Government to bring forward a constitutional amendment to amend the Tenth Schedule envisaging that while an expelled member should not be subject to victimization by the political party which expelled him, at the same time, certain fetters should be imposed upon him such as - prohibition on his joining any legislature party in the House/Political party outside the House; or holding any ministerial position or any other office in the Government etc. It had further recommended that consequences of expulsions from the political party should, therefore, be clearly laid down in the Tenth Schedule, so as to define the status, rights and obligations of expelled members in the House. The Constitution (Ninty-First Amendment) Act, 2004 however, did not address this aspect.

Interpretation of the term 'political party' in deciding cases under Tenth Schedule

Another issue that has frequently come up for deliberations is about interpretation of the term 'political party' for deciding matters concerning defections.

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

Miscellaneous Issues

The operation of Anti-defection Law in State Legislatures has reflected a number of peculiarities in interpretation of procedural as well as operative aspects of the law. To properly appreciate the law, its usage and impact on our democratic polity, it is imperative that trends concerning defections in various State Legislatures are examined in the light of political scenario prevailing during occurrence of various cases. It is particularly important to note that the need for review of the law arose primarily due to varying interpretations of the law in some cases. Such cases have been elucidated in the succeeding paragraphs.

Speaker's power to decide cases when the legislature is placed under suspended animation

An interesting point that came up for decision during the deliberation in Selkai Hrangchal and Krishna Singh Case* in Manipur was whether the Speaker would have any jurisdiction and power to decide defection matters under the Tenth Schedule when the State Legislature is placed under suspended animation due to the imposition of President's Rule under article 356 of the Constitution. On this, the Speaker observed:-

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* For summary of case pl. see Chapter 4 A.

> The President's Proclamation dated 7 January 1992 placing the State Legislature under suspended animation has not mentioned anything about the Tenth Schedule and the power and jurisdiction of the Speaker thereunder. As pointed out by the Supreme Court in the operative part of its order dated 12 November 1991 in a bunch of cases relating to the Tenth Schedule, the Speaker acts as a tribunal in quasi-judicial cases and not as a part of the State Legislature while exercising his power under the Tenth Schedule. I hold accordingly that the said proclamation under article 356 of the Constitution does not have the effect of ousting the Speaker from exercising his power under the Tenth Schedule.

Whether petition given under Tenth Schedule can be withdrawn

In Lehinson Sangma's Case* in Meghalaya, the issue for consideration was whether petitions given under the provisions of the Tenth Schedule can be withdrawn. The Speaker observed:-

> It is necessary to see the legal position regarding the withdrawal of a complaint under the Tenth Schedule to the Constitution of India, before pronouncing decision which was reserved due to withdrawal of the complaint by the original political party... There is no provision of withdrawal of a complaint under the Tenth Schedule to the Constitution of India. Therefore, the natural inference would be that withdrawal of a complaint couldn't be entertained under the Scheme of the Tenth Schedule to the Constitution of India. At best it can be taken as a constructive condonation as envisaged under paragraph 2(1)(b) of the Schedule. If it is taken as constructive condonation, a withdrawal can be entertained but only within the prescribed limit of 15 days. After the prescribed limit of 15 days, the Speaker's hands are tied to entertain any such withdrawal under the Scheme of the Tenth Schedule and doing so would be acting against the Constitution of India. The legal position being this, a duty and responsibility is cast upon me to pronounce my decision on merit...

Applicability of Anti-defection Law in the event of non framing of Rules

An interesting issue arose in Punjab Legislative Assembly as to whether in

* For summary of case pl. see Chapter 4 A.

the absence of Rules being framed by the Assembly, the Anti-defection Law would be applicable. This point came up prominently in the Bharatiya Janata Party (Punjab) Case (1993)* in which two members of Bharatiya Janata Party claimed a split in the party and formation of a new party, called Bharatiya Janata Party (Punjab). The Speaker observed that in view of established norms and precedents and also the Supreme Court's rulings that in the absence of Rules of Procedure, authorities are required to follow a procedure which is fair and just in accordance with the principles of natural justice, the Speaker is not precluded from proceeding in the matter.

Anti-defection Law vis-à-vis right of dissent

One of the grievances against the Anti-defection Law has been that it hampers the natural right of democratic dissent, which, needless to say, is not in consonance with the liberal spirit of a democratic polity. The issue figured prominently in the Wadala & Others Case* (1987) in Punjab. On the question of validity of the Constitution (Fifty-second Amendment) Act, 1985, on the ground that the Act takes away the freedom of speech of a member of a Legislature and is violative of the fundamental rights, the Punjab and Haryana High Court held the provisions of the Act valid except paragraph 7 of the Tenth Schedule.

Taking cognizance of disqualification petition addressed to Secretary of State Legislature

In one case [Behera Case* (1989)] which arose in the Orissa Legislative Assembly, the issue was whether the Speaker should take cognizance of a petition addressed to the Secretary, (Secretariat) of the Legislative Assembly. Deciding the issue, the Speaker observed that though the petition was addressed to the Secretary, Orissa Legislative Assembly, the same was duly placed before him and he had taken cognizance of the matter and the objection had no merit.

In another case, a procedural issue that emerged in the Karnataka Legislative Assembly was whether an issue under the Anti-defection Law could be raised in the House. In the Janata Dal Case*, (1989) in Karnataka, 111 members who originally belonged to Janata Legislature Party claimed a split in the party, and formation of a new party *i.e.* Janata Dal Party. The Leader of the party also requested the Speaker to recognize the party and allow it to merge with Lok Dal to form Janata Dal Party. The new party and its merger were recognized by the

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* For summaries of cases pl. see Chapter 4 A.

Speaker. A petition for disqualification was submitted by a member against these members. Subsequently, the matter was also raised in the House. On this, the Speaker in his Ruling given on 20 March 1989, observed that in the case of disqualification of a member under the Tenth Schedule to the Constitution, the House cannot have any say and the Speaker is made the sole and final authority to decide the issue.

Speaker's discretion to grant time for submission of replies by the respondents

In the case of Shishirkumar Kotwal in Maharashtra Legislative Assembly*, one of the important procedural issues that emerged during the course of oral hearing relating to the discretionary powers of the Speaker in granting time for submission of replies by the respondents. The main contention of the respondents was that under the concept of Rule of Law, the Speaker was also bound to abide by the rules framed by him. On the other hand, quoting from important Court cases namely, Kihota Hollohan *vs.* Zachillhu (AIR 1993, SC 412), Ravi S. Naik *vs* Union of India (AIR 1994 SC 1558), etc., the Speaker held that the rules framed to curb the menace (of defection) are directory rather than mandatory. This apart, the rules framed in the Assembly under Anti-defection Law provide sufficient space to the Speaker to use discretion in procedural matters relating to grant of time for submission of replies. Accordingly, the Speaker declined permission to the respondents regarding extension of time for filing replies. However, in the case of Narayan Pawar in Maharashtra Legislative Assembly*, an entirly opposite view was taken by the Speaker who while allowing a petition for having voluntarily given up membership of the original party by the respondent opined that the spirit behind the law is more important than the form.

Review of Speaker's decision

Regarding competence of the Speaker to review his decision, the Supreme Court in the Dr. Kashinath Jhalmi vs Speaker and others Case* observed that the Speaker has no power of review under the Tenth Schedule, and an order of disqualification made by him under para 6 is subject to correction only by judicial review. Accordingly, the alleged defects in the instant case would require examination by judicial review in the Writ Petitions filed in the High Court by the affected MLAs.

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* For summaries of cases pl. see Chapter 4 A.

Reference of disqualification petition to Committee of Privileges

As regards the role of the Committee of Privileges in deciding matters concerning defections, an interesting point that appeared for consideration in the Balakrishna Pillai Case* (1989) in Kerala was whether the Speaker himself was competent to determine a question about the disqualification of a member without referring the matter to the Privileges Committee. On this, the Speaker *inter alia* observed that as per the provisions of para 6(1) of the Tenth Schedule, the Speaker of the House was the competent authority to decide the question of disqualification. The said provisions were so clear that there could be no scope for any doubt about authority or competence of the Speaker to decide the matter. The Speaker further observed that as per Rule 7(4), the Speaker can either proceed to decide the matter himself or refer the matter to the Committee of Privileges for a preliminary enquiry for getting a report only if he is satisfied that it is necessary and expedient to make such a reference. The reference contemplated in Rule 7 (4) to the Privileges Committee is only in certain limited cases and that too only to hold a preliminary enquiry and to file report before the Speaker. The word 'preliminary enquiry' necessarily contemplates a further enquiry by the Speaker. Hence, there cannot be much weight in the plea that the Speaker has to refer all cases of defections to the Privileges Committee.

Conversely, the Andhra Pradesh High Court in the case* of C. Ramachandra Reddy found fault with the Rule providing for reference of a disqualification petition to the Committee of Privileges of the House for making a preliminary inquiry on the ground that "paragraph 6 of the Schedule which is the repository of the Speaker's powers does not contain any such provision either for consultation or for appointment of a Committee for any option to advise the Speaker." This observation of the Andhra Pradesh High Court has thrown up a new perspective which is at variance with the well established view that the Presiding Officer can refer a petition to the Committee of Privileges for making a preliminary inquiry and submitting a report to him.

Similarly, in the case* of Mangal Parag (1991) in Madhya Pradesh, on respondents' request that their case be referred to the Committee of Privileges, the Speaker declined to accede to their request stating that Rule 7(4) of the Members of Madhya Pradesh Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 endowed him with discretionary powers in that regard.

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* For summaries of cases pl. see Chapter 4 A.

Speaker's power to decide a disqualification matter suo motu

In Lotha and Others Case* (1990) in Nagaland, the Speaker disallowed the claim of split in the Nationalist Congress Party. The Speaker's decision was interesting in the sense that even though there was no petition for disqualification before him, he disqualified the claimants of split. Here, it is interesting to note that the High Court of Andhra Pradesh also observed in the case of C. Ramachandra Reddy that rules do not "inhibit in any manner the jurisdiction of the Speaker to entertain a reference on the basis of information that he may have from any source other than by way of petition by a member of the House."

Representation of a petition by another in the hearings of a case

In Sikkim, in the Chamla Tshering and Others Case* (1994), the Speaker had to decide whether a member filing a petition under the Tenth Schedule can be represented by any other person. In the instant case, the petitioner did not appear for personal hearing before the Speaker. Instead, an ex-MLA, authorised by the petitioner, represented him. On this, the Speaker observed, 'I do not think that a member filing a petition under the Tenth Schedule can be represented by any other person in the hearing fixed by the Speaker. However, I do not think that it is necessary to decide this point in the present case as it can be decided in some other appropriate petition in future."

Besides the above issues, some other ancillary issues also came up in the decided cases which are briefly mentioned as under.

In the case of Luis Alex Cardozo and others in Goa Legislative Assembly*, the Speaker held that split being one-time affair, any subsequent expulsion/ disqualification of a member of the split-away Group cannot be made a ground for disqualification of the remaining members. In the same case, the Speaker held that reconsideration of a petition for the same cause of action is barred by the principle of *Res-judicata*, that is, the same cause of action cannot be considered again. On the contrary, in two separate cases, *viz.* Ravi Naik Case and Sanjay Bandekar/Ratnakar Chopdekar Case, the earlier orders of the Speaker were reviewed and set aside by the Acting Speaker. Besides, the Speaker opined that submission of the petition after almost two years of the occurrence of the cause of action was contrary to the Doctrine of Reasonableness of Time, as reflected in the Supreme Court's decision in the Dhartipakar Madan Lal Aggarwal vs Rajiv Gandhi Case. He accordingly disallowed the petition.

Exemption of the Speaker from the rigours of para 5 of the Tenth Schedule

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* For summaries of cases pl. see Chapter 4 A.

has also been variously interpreted. For instance in the case* of Luis Proto Barbosa (1990) in Goa, it was contended that the respondent, who was acting as the Speaker at the time of submission of the petition, by his act of tendering resignation from the Indian National Congress, incurred disqualification under para 2 of the Tenth Schedule. As the respondent was the Speaker of the House, another member, Shri Kashinath Jhalmi, MLA, was elected in terms of para 6(1) of the Tenth Schedule to the Constitution to decide the petition. During personal hearing, it was contended that the respondent's resignation from the INC did not amount to violation of para 2 because in the capacity of the Speaker, he was exempt under para 5 of the Tenth Schedule. Shri Jhalmi, however, overruled this contention stating that the respondent should have made it known at the time of tendering his resignation. The respondent was finally disqualified.

As may be seen, the operation of the Anti-defection Law has thrown up a lot of complexities. The provisions of the Law have been understood and interpreted in different ways by different Presiding Officers while deciding cases under the Anti-defection Law. Some of the decisions of the Presiding Officers have been challenged in Courts of Law. In some cases, the Courts allowed the writ petitions challenging decisions of Presiding Officers, while in some others the Courts upheld the decisions. The implementation of the Anti-defection Law as understood through decisions of Presiding Officers and judgements by Courts of Law in some cases, has brought to fore new perspectives *vis-à-vis* interpretation of various provisions of the Law. The endeavour of this themewise analytical study has been to facilitate comprehension of operation of the Law since its inception.

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* For summaries of cases pl. see Chapter 4 A.

CHAPTER FIVE
ANTI-DEFECTION LAW IN INDIA
AN APPRAISAL

5

Anti-Defection Law in India : An Appraisal

It took almost two decades for the Anti-defection Law to find a place in the Indian statute book, when on 1 March 1985 the Tenth Schedule* was added to the Constitution. In the course of its implementation Presiding Officers felt that there were several lacunae and short-comings in the law.

Lacunae and shortcomings in the Anti-defection Law

Split and Merger

The two provisions of the Tenth Schedule that attracted maximum attention and criticism related to splits (para 3 of the Tenth Schedule) and mergers (para 4 of the Tenth Schedule).

The main ground of criticism regarding splits and mergers was that while the law sought to prohibit and punish individual defection, it condoned collective defection by way of splits in and mergers of Legislature Parties. Another ground on which these provisions were criticized was that there was dual standard regarding the requirement of one-third members of the legislature party for a valid split and two-thirds for a valid merger. It was argued that if the intention of the law-makers in incorporating the provisions of split and merger in the law was to leave scope for ideological differences within the party, there was no justifiable rationale behind the double standard. As a matter of fact, one of the most common misuses of the provisions of splits, which was due to this dual standard, pertained to engineering of splits to facilitate mergers. Para 3 of the Tenth Schedule relating to splits has since been omitted by the Constitution (Ninety-first Amendment) Act, 2003.

Expulsions

A lot of difficulties have been felt in the implementation of the Anti-defection Law on account of the law being silent on the aspect of expulsion of members from

* Provisions of the Tenth Schedule have been enumerated in details in Annexure A

their political parties. A major lacuna in the Anti-defection Law is that it makes no provision to cope with the situation arising out of expulsion of a member from his political party.

Status of Expelled Members

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

Direction 120 of the Directions by the Speaker provides that "The Speaker may recognize an association of members as a Parliamentary Party or Group for the purpose of functioning in the House and his decision shall be final"

Direction 121 of the Directions which lays down conditions for such recognition provides as follows:-

"In recognizing a Parliamentary Party or Group the Speaker shall take into consideration the following principles:-

(i) An association of members who propose to form a Parliamentary Party-
   (a) shall have announced at the time of the general elections a distinct ideology and programme of Parliamentary work on which they have been returning to the House;
   (b) shall have an organization both inside and outside the House; and
   (c) shall have at least a strength equal to the quorum fixed to constitute

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* For details please *see* Annexure E

a sitting of the House, that is one-tenth of the total number of members of the House.

(ii) An association of members to form a Parliamentary Group shall satisfy the conditions specified in parts (a) and (b) of clause (i) and shall have at least a strength of 30 members.

A similar approach was adopted during the Ninth Lok Sabha (1991) when the then Speaker, Shri Rabi Ray declared* 25 members expelled from the Janata Dal as unattached.

During the Tenth Lok Sabha (1993), however, the then Speaker Shri Shivraj Patil in his decision in the Janata Dal case adopted a different approach and observed, "In the past, in some cases, when the members were expelled, they were called unattached, to distinguish them from the party members as well as from the independent members. The word unattached is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament."@

It would be of interest to note the observations made by the Supreme Court of India in G. Viswanathan *vs.* Speaker, Tamil Nadu Legislative Assembly and Azhagu Thirunavakkarasu *vs.* Speaker, Tamil Nadu Legislative Assembly cases [(1996)2 Supreme Court cases 353]. The Supreme Court held:

> ...in view of the Explanation to para 2(1) of the Tenth Schedule, even if a member is thrown out or expelled from the party, for the purposes of the Tenth Schedule he will not cease to be a member of the political party that had set him up as a candidate for the election. He will continue to belong to that political party even if he is treated as `unattached**.

While the political parties continue to retain the power to expel their members from the party under the provisions of their party constitution, the non-existence of any provision in the Tenth Schedule with regard to such members, especially in the light of the above observations of the Supreme Court, creates an anomalous situation inasmuch as the expelled member continues to be subject to the discipline and whips etc., of the party but may no longer enjoy any right under the party constitution.

Voluntarily giving up of membership of a party

Paragraph 2(1)(a) of the Tenth Schedule provides *inter alia* as under: -

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* For details please *see* Annexure D

@ For details please *see* Annexure D

** For details please *see* Chapter 4 C

\# Omitted by the Constitution (Ninty -first Amendement Act, 2003)

(1) Subject to the provisions of paragraphs [3]* 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House -

(a) if he has voluntarily given up his membership of such political party,

As per this provision, if a member voluntarily gives up the membership of his political party, he shall be disqualified for being a member of the House. However, it is not very clear from paragraph 2 whether indulging in acts like working against the interests of the party, supporting a candidate of other party in elections, etc., which, technically speaking do not amount to giving up the membership of the party may be construed as the member having voluntarily given up the membership of the party.

In this context it is pertinent to refer to the observations of the Supreme Court in Ravi S. Naik *vs.* Sanjay Bandekar (AIR 1994 SC 1558) case in which it was held that "even in absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has 'voluntarily given up his membership' of the political party to which he belongs, and that the expression 'voluntarily given up his membership' is not synonymous with 'resignation' and has wider connotation."*

Definition of Political Party

The Tenth Schedule does not define the term political party though it has been repeatedly used in the Tenth Schedule.

Efforts made for removal of lacunae in the Law

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

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

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

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* For details please *see* Chapter 4.

Court of India to themselves on the request of the Government of India as important questions of law and Constitution were involved.

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

The Court in their judgement also *inter-alia* held that:-

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

(ii) The deeming provision in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in articles 122(1) and 212(1) of the Constitution as understood and explained in 1965(1) SCR 413 (Keshav Singh's case) to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words "be deemed to be proceedings in Parliament" or "proceedings in the Legislature of a State" confines the scope of the fiction accordingly.

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

While several other suggestions were made at these meetings, it was unanimously agreed by the Presiding Officers that in matters relating to Anti-defection Law before Courts, they would furnish the records, if called for and respect the decisions of the Courts. They would, however, not subject themselves to the jurisdiction of the Courts. Suggestions have also been made from time to time

by various bodies/institutions for amendments in the Anti-defection Law to make it more effective.

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

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

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

(ii) The concerned Chairman/Speaker may decide the case and an appeal against such decision may lie jointly with the President and Vice-President of India, if the case relates to the Rajya Sabha, or the President of India, the Vice-President of India and the Speaker, Lok Sabha, if the case relates to Lok Sabha; or the Governor of the State or Chairman of the Legislative Council, if the case relates to the Legislative Council of a State; or the Governor of the State or the Speaker of the Assembly, if the case relates to the Legislative Assembly of a State.

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

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

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

The Law Commission of India under the Chairmanship of Justice B.P. Jeevan Reddy in their 170th Report* on "Reform of the Electoral Laws" submitted to the Government of India in May 1999, made suggestions for amendments to the Anti-defection Law.

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

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

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

- Provisions be made in the Tenth Schedule providing that all persons defecting must resign from their Parliamentary or Assembly seats and seek fresh mandate. Provisions regarding split may be scrapped from the Tenth Schedule to the Constitution.
- Defector be debarred from holding any public office of a Minister or any other remunerative political post at least for the duration of remaining term of existing Legislature or until fresh elections are held.

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* Law Commission of India, *One hundred seventeenth Report on "Reform of the Electoral Laws"*. May 199, pp 84-89

- Vote cast by a defector to topple a Government be treated as invalid.
- Power to decide questions as to disqualification on ground of defection should vest in the Election Commission instead of in the Chairman or Speaker of the House concerned.

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

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

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

The Committee in their Report entitled 'A Review of Anti-defection Law' recommended that the Government of India may bring forward a constitutional amendment to amend the Tenth Schedule to the Constitution of India on the following lines:

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

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

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

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

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

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

members.

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

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

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

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

Constitution (Ninety-first Amendment), Act 2003*

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

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

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

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

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* Introduced in the Lok Sabha on 5 May 2003 as the Constitution (Ninty-seventh Amendment Bill) Bill 2003

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

Depriving a defector from holding any 'remunerative political post' as defined in the Act, the new article 361B, inserted after article 361A, provides that a member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

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

Conclusion

The spirit behind the Anti-defection Law, as enacted in mid eighties was undisputably laudable. As the Parliament broke new ground when it legislated on the subject and there were hardly any model laws to rely upon, it was natural that some problem areas which have come to light during the operation of the law could not be anticipated.

The Anti-defection Law has, succeeded, to some extent, in checking the menace of defections in India's body politic. The Constitution (Ninety-first Amendment) Act, 2003, which has omitted the provisions regarding split from the Tenth Schedule, has also effectively put an end to the unhealthy practice of engineering split for facilitating backdoor merger with another party on the strength of one-third members of a legislature party instead of the required two-third members. Consequently, now the requirement for effecting a merger has really become stringent since it is not that easy to garner support of two-third members as required under the provisions of para 4 Tenth Schedule.

There is a perception, however, that provision as to merger of legislature parties also suffers from some ambiguities. There is a view that even after doing

away with the split provision from the Tenth Schedule of the Constitution, the bane of defection is far from over because the Constitution (91st Amendment) Act has left paragraph 4 of the Anti-defection Law dealing with mergers untouched.

The other provisions of the Act *viz.*, debarring a defector from holding the office of Minister or any remunerative political post for the specified period will also check the evil of defection.

Even after the enactment of the Constitution (Ninety-first Amendment) Act, 2003, there are still some grey areas in the Anti-defection Law relating to the status of expelled members, interpretation of the term 'voluntarily giving up membership of party', and 'deciding authority' for cases under the Anti-defection Law. It is hoped that these issues would also receive due attention in the appropriate quarters in course of time. What is needed is a comprehensive legislation for making the law more effective.

ANNEXURES

ANNEXURE – A

Texts of Articles 102 (2) and 191 (2) and the Tenth Schedule of the Constitution

Article 102 (2)

A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Article 191 (2)

A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

Tenth Schedule*

Provisions as to disqualification on ground of defection

1. Interpretation – In this Schedule, unless the context otherwise requires –

(*a*) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;

(*b*) "legislature party", in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or [***]@ paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(*c*) "original political party", in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

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* Added by the Constitution (Fifty-second Amendment) Act, 1985 (*w.e.f.* 1 March 1985).

@ The words and figure "paragraph 3 or, as the case may be" omitted by the Constitution (Ninety-first Amendment) Act, 2003, s. 5 (w.e.f. 1.1.2004).

(*d*) "paragraph" means a paragraph of this Schedule.

2. Disqualification on ground of defection – (1) Subject to the provisions of paragraphs [**]#, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House –

(*a*) if he has voluntarily given up his membership of such political party; or

(*b*) if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs 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 within fifteen days from the date of such voting or abstention.

Explanation – For the purposes of this sub-paragraph, –

(*a*) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member;

(*b*) a nominated member of a House shall, –

(*i*) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(*ii*) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(4) Notwithstanding anything contained in the foregoing provisions of this

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The figure "3" omitted by the Constitution (Ninety-first Amendment) Act, 2003, s.5 (*w.e.f.* 1.1.2004).

paragraph, a person who, on the commencement of the Constitution (Fifty-second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,–

(*i*) where he was a member of a political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(*ii*) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph.

[* * * *]#

4. Disqualification on ground of defection not to apply in case of merger – (1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party –

(*a*) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

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* Para 3 as originally contained in the Constitution (Fifty-second Amendment) Act, 1985 read as under:

\# **3. Disqualification on ground of defection not to apply in case of split.**– Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the members of such legislature party, –

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground –

(i) that he has voluntarily given up his membership of his original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(*b*) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph.

The paragraph 3 regarding "disqualification on ground of defection not to apply incase of split" omitted by the Constitution (Ninety-first Amendment) Act, 2003. (Please see Annexure C)

(*b*) have not accepted the merger and opted to function as a separate group,

and from the time of such merger, such other political party or new political party or group, as the case may be, shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

5. Exemption – Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,–

(*a*) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or

(*b*) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

6. Decision on questions as to disqualification on ground of defection – (1) if any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final:

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule

shall 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.

*7. **Bar of jurisdiction of courts** – Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. Rules – (1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for –

(*a*) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;

(*b*) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(*c*) the reports which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(*d*) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

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* This paragraph has been held by the Supreme Court of India as *ultra vires* of the Constitution in their majority opinion in Kihota Hollohon vs. Zachilhu & others on the ground of its non-ratification by the State Legislatures (AIR 1993, SC 412)

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

ANNEXURE – B

The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

In exercise of the powers conferred by paragraph 8 of the Tenth Schedule to the Constitution of India, the Speaker, Lok Sabha, hereby makes the following rules, namely:–

Short Title. 1. These rules may be called the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.

Definitions. 2. In these rules, unless the context otherwise requires :–

(a) 'Bulletin' means the Bulletin of the House of the People (Lok Sabha);

(b) 'Committee' means the Committee of Privileges of the House of the People (Lok Sabha);

(c) 'Form' means a form appended to these rules;

(d) 'date of commencement' , in relation to these rules means the date on which these rules take effect under sub-paragraph (2) of paragraph 8 of the Tenth Schedule;

(e) 'House' means the House of the People (Lok Sabha);

(f) 'leader', in relation to a legislature party, means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act, in the absence of the leader as, or discharge the functions of , the leader of the party for the purposes of these rules;

(g) 'member' means a member of the House of the People (Lok Sabha);

(h) 'Tenth Schedule' means the Tenth Schedule to the Constitution of India;

(*i*) 'Secretary-General' means the Secretary-General to the House of the People (Lok Sabha) and includes any person for the time being performing the duties of the Secretary-General;

Information to be furnished by leader of a legislature party.

3. (1) The leader of each legislature party (other than a legislature party consisting of only one member) shall, within thirty days after the first sitting of the House, or, where such legislature party is formed after the first sitting, within thirty days after its formation, or, in either case within such further period as the Speaker may for sufficient cause allow, furnish the following to the Speaker, namely:–

(a) a statement (in writing) containing the names of members of such legislature party together with other particulars regarding such members as in Form I and the names and designations of the members of such party who have been authorised by it for communicating with the Speaker for purposes of these rules;

(b) a copy of the rules and regulations (whether known as such or as constitution or by any other name) of the political party concerned; and

(c) where such legislature party has any separate set of rules and regulations (whether known as such or as constitution or by any other name), also a copy of such rules and regulations.

(2) Where a legislature party consists of only one member, such member shall furnish a copy of the rules and regulations mentioned in clause (b) of sub-rule (1) to the Speaker, within thirty days after the first sitting of the House or, where he has become a member of the House after the first sitting within thirty days after he has taken his seat in the House, or, in either case within such further period as the Speaker may for sufficient cause allow.

(3) In the event of any increase in the strength of a legislature party consisting of only one member, the provisions of sub-rule (1) shall apply in relation to such

legislature party as if such legislature party had been formed on the first date on which its strength increased.

(4) Whenever any change takes place in the information furnished by the leader of a legislature party under sub-rule (1) or by a member under sub-rule (2), he shall, within thirty days thereafter, or, within such further period as the Speaker may for sufficient cause allow, furnish in writing information to the Speaker with respect to such change.

(5) In the case of the House in existence on the date of commencement of these rules, the reference in sub-rule (1) and (2) to the date of the first sitting of the House shall be construed as a reference to the date of commencement of these rules.

(6) Where a member belonging to any political party votes or abstains from voting in the House contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, the leader of the legislature party concerned or where such member is the leader, or as the case may be, the sole member of such legislature party, such member, shall, as soon as may be after the expiry of fifteen days from the date of such voting or abstention, and in any case within thirty days from the date of such voting or abstention, inform the Speaker as in Form II whether such voting or abstention has or has not been condoned by such political party, person or authority.

Explanation–A member may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

Information etc. to be furnished by members.

4. (1) Every member who has taken his seat in the House before the date of commencement of these rules shall furnish to the Secretary-General, within thirty days from such date or within such further period as the Speaker may for sufficient cause allow, a statement of particulars and declaration as in Form III.

(2) Every member who takes his seat in the House after the commencement of these rules shall, before making and subscribing an oath or affirmation under article 99 of the Constitution and taking his seat in the House, deposit with the Secretary-General, his election certificate or, as the case may be, a certified copy of the notification

nominating him as a member and also furnish to the Secretary-General a statement of particulars and declaration as in Form III.

Explanation–For the purposes of this sub-rule, "Election Certificate" means the certificate of election issued under the Representation of the People Act, 1951 (43 of 1951) and the rules made thereunder.

(3) A summary of the information furnished by the members under this rule shall be published in the Bulletin and if any discrepancy therein is pointed out to the satisfaction of the Speaker, necessary corrigendum shall be published in the Bulletin.

Register of Informations to members.

5. (1) The Secretary-General shall maintain, as in Form IV, a register based on the information furnished under rules 3 and 4 in relation to the members.

(2) The information in relation to each member shall be recorded on a separate page in the Register.

References to be by petitions.

6. (1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

(2) A petition in relation to a member may be made in writing to the Speaker by any other member:

Provided that a petition in relation to the Speaker shall be addressed to the Secretary-General.

(3) The Secretary-General shall,–

(a) as soon as may be after the receipt of a petition under the proviso to sub-rule (2) make a report in respect thereof to the House; and

(b) as soon as may be after the House has elected a member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such member.

(4) Before making any petition in relation to any member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every petition,–

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such persons and the gist of such information as furnished by each such person.

(6) Every petition shall be signed by a petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

(7) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. **Procedure**

7. (1) On receipt of a petition under rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule.

(2) If the petition does not comply with the requirements of rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Speaker shall cause copies of the petition to and of the annexures thereto to be forwarded,–

(a) to the member in relation to whom the petition has been made; and

(b) where such member belongs to any legislature party and such petition has not been made by the leader thereof, also to such leader, and such

member or leader shall, within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon to the Speaker.

(4) After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature, and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.

(5) The Speaker shall, as soon as may be after referring a petition to the Committee under sub-rule (4), intimate the petitioner accordingly and make an announcement with respect to such reference in the House or, if the House is not then in session, cause the information as to the reference to be published in the Bulletin.

(6) Where the Speaker makes a reference under sub-rule (4) to the Committee, he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

(7) The procedure which shall be followed by the Speaker for determining any question and the procedure which shall be followed by the Committee for the purpose of making a preliminary inquiry under sub-rule (4) shall be, so far as may be, the same as the procedure for inquiry and determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

(8) The provisions of sub-rules (1) to (7) shall apply with respect to a petition in relation to the Speaker as they apply with respect to a petition in relation to any other member and for this purpose, reference to the Speaker in these sub-rules shall be construed as including references to the member elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

Decision on petitions

8. (1) At the conclusion of the consideration of the petition, the Speaker or, as the case may be, the member elected under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule shall by order in writing,–

(a) dismiss the petition, or

(b) declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule, and cause copies of the order to be delivered or forwarded to the petitioner, the member in relation to whom the petition has been made and to the leader of the legislature party, if any, concerned.

(2) Every decision declaring a member to have become subject to disqualification under the Tenth Schedule shall be reported to the House forthwith if the House is in session, and if the House is not in session, immediately after the House reassembles.

(3) Every decision referred to in sub-rule (1) shall be published in the Bulletin and notified in the Official Gazette and copies of such decision forwarded by the Secretary-General to the Election Commission of India and the Central Government.

Directions as to detailed working of these rules.

9. The Speaker may, from time to time, issue such directions as he may consider necessary in regard to the detailed working of these rules.

FORM I

[*See* Rule 3(1) (a)]

Name of the Legislature Party: Name of the corresponding political party:

S.No.	Name of the Member (in block letters)	Father's/ husband's name	Permanent Address	Name of the State from which elected	Name of the Constitu-ency from which elected
(1)	(2)	(3)	(4)	(5)	(6)

Date : Signature of the leader of the legislature party.

FORM II

[*See* Rule 3(6)]

To

The Speaker,
Lok Sabha

Sir,

At the sitting of the House held on ..... (date) during voting on .....(subject matter) .....

+ Shri .....M.P. (Division No. .....) member of ..... (name of political party), and member of ..... (name of legislature party) had voted/abstained from voting,	+I .....(name of the member) M.P., (Division No. .....), member of .....(name of the political party) and leader of/sole member of .....(name of legislature party) voted/abstained from voting.

contrary to the direction issued by..... *(+Person/authority/party) without obtaining the prior permission of the said *person/authority/party.

2. On (date) .....the aforesaid matter was considered by .....*(+Person/authority/party) and the said +voting abstention was + condoned/was not +condoned by +him/it.

Yours faithfully,

Date: (Signature).

+ Strike out inappropriate words/portions.

* (Here mention the name of the person/authority/party, as the case may be, who had issued the direction).

FORM III

[*See* Rule 4]

1. Name of the member (in block letters):

2. Father's/husband's name:

3. Permanent Address:

4. Delhi Address:

5. Date of election/nomination:

6. Party affiliation as on–
   (*i*) Date of election/nomination:
   (*ii*) The *28th February, 1985:
   (*iii*) Date of signing this form:

DECLARATION

I, ...hereby declare that the information given above is true and correct.

In the event of any change in the information given above, I undertake to intimate the Speaker immediately.

Signature/Thumb
Impression of member

Date:

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* To be filled in only by member elected or nominated before the 1st March, 1985, being the date of commencement of the Constitution (Fifty-second Amendment) Act, 1985. [This sub-column was relevant during Eighth Lok Sabha only]

FORM IV

[*See* Rule 5(1)]

Name of the member (in block letters)	Father's/ husband's name	Permanent Address	Delhi Address	Name of the State from which elected	Date of election/ nomination	Name of political party to which he belongs	Name of legislature party to which he belongs	Remarks
1	2	3	4	5	6	7	8	9

ANNEXURE - C

The Constitution
(Ninety–first Amendment) Act, 2003*

An Act further to amend the Constitution of India.

Be it enacted by Parliament in the Fifty - fourth Year of the Republic of India as follows:–

1. This Act may be called the Constitution (Ninety-first Amendment) Act, 2003.

Short title.

2. In Article 75 of the Constitution, after clause (1), the following clauses shall be inserted, namely:—

Amendment of article 75.

"(1A) The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen per cent. of the total number of members of the House of the People.

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

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* Came into force *w.e.f.* 1.1.2004.

3. In article 164 of the Constitution, after clause (1), the following clauses shall be inserted, namely:- Amendment of article 164.

"(1A) The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed fifteen per cent. Of the total number of members of the Legislative Assembly of that State:

Provided that the number of Ministers, including the Chief Minister, in a State shall not be less than twelve:

Provided further that where the total number of Ministers, including the Chief Minister, in the Council of Ministers in any State at the commencement of the Constitution (Ninety-first Amendment) Act, 2003 exceeds the said fifteen per cent. or the number specified in the first proviso, as the case may be, then the total number of Ministers in that State shall be brought in conformity with the provisions of this clause within six months from such date as the President may by public notification appoint.

(1B) A member of the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council belonging to any political party who is disqualified for being a member of that House under paragraph 2 of the Tenth Schedule shall also be disqualified to be appointed as a Minister under clause (1) for duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or where he contests any election to the Legislative Assembly of a State or either House of the Legislature of a State having Legislative Council, as the case may be, before the expiry of such period, till the date on which he is declared elected, whichever is earlier.".

4. After article 361A of the Constitution, the following article shall be inserted, namely:- Insertion of new article 361B.

'361B. A member of a House belonging to any political party who is disqualified for being a member of the House under paragraph 2 of the Tenth Schedule shall also be disqualified to hold any remunerative political post for Disqualification for appointment on remunerative political post.

duration of the period commencing from the date of his disqualification till the date on which the term of his office as such member would expire or till the date on which he contests an election to a House and is declared elected, whichever is earlier.

Explanation – For the purposes of this article,–

(*a*) the expression "House" has the meaning assigned to it in clause (*a*) of paragraph 1 of the Tenth Schedule;.

(*b*) the expression "remunerative political post" means any office–

(*i*) under the Government of India or the Government of a State where the salary or remuneration for such office is paid out of the public revenue of the Government of India or the Government of the State, as the case may be; or

(*ii*) under a body, whether incorporated or not, which is wholly or partially owned by the Government of India or the Government of a State and the salary or remuneration for such office is paid by such body,

except where such salary or remuneration paid is compensatory in nature.'

Amendment of the Tenth Schedule.

5. In the Tenth Schedule to the Constitution,–

(*a*) in paragraph 1, in clause (*b*) the words and figure "paragraph 3 or, as the case may be," shall be omitted;

(*b*) in paragraph 2, in sub-paragraph (1), for the words and figures "paragraphs 3, 4 and 5", the words and figures "paragraphs 4 and 5" shall be substituted;

(*c*) paragraph 3 shall be omitted.

ANNEXURE - D

Decisions in respect of petitions for disqualification given by respective Speakers, Lok Sabha and Chairmen, Rajya Sabha under the Tenth Schedule to the Constitution

(I) Decisions of Speakers, Lok Sabha

(1) Decision of Dr. Bal Ram Jakhar, Speaker, Eighth Lok Sabha under paragraph 6(1) of the Tenth Schedule to the Constitution of India (Sudarsan Das and Sahebrao Patil Dongaonkar Case 1987 *)

The Speaker, Lok Sabha, gave the following decision on 9 September, 1987, on the petitions of Shri K.P. Unnikrishnan, M.P., against Sarvashri Sudarsan Das and Sahebrao Patil Dongaonkar, MPs under paragraph 6(1) of the Tenth Schedule to the Constitution of India:–

"Order"

Shri K.P. Unnikrishnan, member of Lok Sabha, (hereinafter called the petitioner) gave two separate petitions on 6 April 1987, against Sarvashri Sudarsan Das and Sahebrao Patil Dongaonkar, members of Lok Sabha, (hereinafter called the respondents) under paragraph 6 of the Tenth Schedule to the Constitution and rule 6 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.

The gravamen of the charges made by the petitioner in his petitions was that the respondents – who were elected to Lok Sabha on the ticket/symbol of Congress (S) party from Karimganj (Assam) and Aurangabad (Maharashtra) constituencies respectively had incurred disqualification for being members of the House in terms of paragraph 2 (1) (a) of the Tenth Schedule to the Constitution

* Gazette of India Extraordinary, Part II dt. 11 September 1987; and Lok Sabha Bulletin (II) dt. 10 September 1987, para No. 1857.

consequent upon their admission to the Congress (I) party. The petitioner had contended that originally there were four members of Congress (S) legislature party in Lok Sabha *viz.* Sarvashri K.P. Unnikrishnan, V. Kishore Chandra S. Deo, Sudarsan Das and Sahebrao Patil Dongaonkar. Out of these four members, two *i.e.* the respondents sought admission and were admitted to the Congress (I) party. According to the petitioner, this amounted to voluntarily giving up, by these members, their membership of Congress (S) political party to which they originally belonged. The petitioner had also contended that the admission of respondents to the Congress (I) party was not protected by paragraph 4(1) of the Tenth Schedule to the Constitution which provides that "a member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party", since the conditions laid down in paragraph 4(2) for such a merger to be valid *viz.* ".....if, and only if, not less than two-thirds of the members of legislature party concerned have agreed to such merger", had not been fulfilled. The petitioner had, therefore, prayed that the respondents be declared disqualified for being members of the House.

After having satisfied myself in terms of rule 7 (1) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 (hereinafter called the Rules) that the petitions complied with the requirements of rule 6, I directed that copies of the petitions be forwarded to the respondents and the Leader of the Congress (I) Legislature Party in terms of rule 7(3) (a) and (b) of the Rules for furnishing their comments.

The respondents in their identical replies stated that the Congress (S) was a national party under the Presidentship of Shri Sharad Pawar. The petitioner and another member of Congress (S) Legislature Party Shri V. Kishore Chandra S. Deo were expelled from the primary membership of the party by the Congress (S) Working Committee at its meeting held on 29 November 1986. This decision of the Working Committee was conveyed to the Speaker, Lok Sabha on 30 November 1986 by the President of Congress (S) party, Shri Sharad Pawar. The Congress (S) party later decided to merge with Congress (I) party at the Congress (S) Plenary Session held at Aurangabad on 9 December 1986. Thus according to the respondents, consequent upon the expulsion of Sarvashri K.P. Unnikrishnan and V. Kishore Chandra S. Deo from the primary membership of the Congress (S) party, the strength of the Congress (S) Legislature Party in Lok Sabha at the time of merger of Congress (S) party with Congress (I) party was only two and not four as contended by the petitioner. The respondents, therefore, claimed that their admission to the Congress (I) party was valid and within the provisions of paragraph 4 of the Tenth Schedule

to the Constitution.

The Minister of Parliamentary Affairs (Shri H.K.L. Bhagat) who replied on behalf of the Leader of the Congress (I) Party - being so authorised in terms of rule 3(1) (a) of the Rules – stated that the strength of the Congress (S) Legislature Party in Lok Sabha was no doubt originally four, but subsequent to the expulsion of Sarvashri K.P. Unnikrishnan and V. Kishore Chandra S. Deo from the primary membership of the Congress (S) Party, they were treated as unattached members in the Lok Sabha as per the directions of the Speaker, Lok Sabha. The strength of the Congress (S) Legislature Party in Lok Sabha consequently came down to two. The Minister of Parliamentary Affairs further stated that as the Congress (S) Legislature Party consisted of only two members (*viz.* the respondents) at the time of merger of Congress (S) Party with Congress (I) Party, their admission to the Congress (I) Party was 'perfectly valid', 'legally sound' and in accordance with the provision of paragraph 4(2) of the Tenth Schedule to the Constitution.

On 6 May 1987, the petitioner addressed a letter to me raising certain legal and constitutional points questioning my authority to declare members elected on a party ticket/symbol as unattached. On the petitioner's request, I referred these to the Attorney-General for India for his opinion. In his opinion dated 20 July 1987, the Attorney-General for India stated that the action taken by me was "correct and in accordance with law."

It is thus obvious that the contention of the petitioner that the respondents have become disqualified for being members of Lok Sabha is untenable. I, therefore, hold that the admission of the respondents to the Congress (I) Party is valid and legal and they have not incurred any disqualification for being members of Lok Sabha. The petitions have no merit and need to be dismissed in terms of rule 8(1) (a) of the Rules.

Taking into account all the facts and circumstances of the case and in accordance with the provisions of the Tenth Schedule to the Constitution, I hereby decide, declare and order as follows:–

> In exercise of powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India, I, B. R. Jakhar, Speaker, Lok Sabha, hereby decide that the petitions dated 6 April 1987, given by Shri K.P. Unnikrishnan against Sarvashri Sudarsan Das and Sahebrao Patil Dongaonkar have no merit and Sarvashri Sudarsan Das and Sahebrao Patil Dongaonkar have not incurred any disqualification in terms of paragraph 2(1) (a) of the Tenth Schedule to the Constitution. I accordingly dismiss the petitions."

(2) Decision of Dr. Bal Ram Jakhar, Speaker, Eighth Lok Sabha under paragraph 6(1) of the Tenth Schedule to the Constitution of India (In Lal Duhoma Case 1987–88)*

The Speaker, Lok Sabha, gave the following decision on 24 November 1988, on the petition of Shri Ram Pyare Panika, M.P., against Shri Lal Duhoma, M.P., under paragraph 6(1) of the Tenth Schedule to the Constitution of India :–

"Whereas Shri Ram Pyare Panika, MP, filed before me a petition on the 21 July 1987, under paragraph 6 of the Tenth Schedule to the Constitution of India and rule 6 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, praying that the Speaker, Lok Sabha, be pleased to declare that Shri Lal Duhoma, MP, has become subject to disqualification as per provisions contained in the Tenth Schedule to the Constitution.

Whereas the said petition was referred by me to the Committee of Privileges, Lok Sabha, on 16 November 1987, under rule 7 (4) of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 for making a preliminary inquiry and submitting a Report to me.

Whereas the Committee of Privileges having carefully examined the evidence tendered and documents produced by the petitioner and his witnesses as also by the respondent, submitted their Report to me on 14 October 1988.

Whereas I gave an opportunity to Shri Lal Duhoma to present his case in person before me on 15 November 1988.

Now, therefore, taking into account all the facts and circumstances of the case, the Report of the Committee of Privileges, the submissions made by Shri Lal Duhoma and in accordance with the provisions of the Tenth Schedule to the Constitution I hereby decide, declare and order as follows:–

Order

In exercise of powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India, I, B. R. Jakhar, Speaker, Lok Sabha, hereby decide that Shri Lal Duhoma an elected member of Lok Sabha from Mizoram constituency, has incurred disqualification in terms of paragraph 2(1) (a) of the said Schedule for being a member of Lok Sabha by voluntarily giving up his membership of Congress (I) - his original political party.

Accordingly, Shri Lal Duhoma has ceased to be a Member of Lok Sabha with immediate effect."

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* *See* Lok Sabha Debate dt. 24 November 1988 cc. 149-50; Also *see* Lok Sabha Bulletin (II) dt. 24 November 1988. Para No. 2637.

(3) Decision of Shri Rabi Ray, Speaker, Ninth Lok Sabha under Tenth Schedule to the Constitution (Janata Dal Case 1991,)*

The detailed decision of the Speaker, Lok Sabha under the Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 as announced in the House on 11 January 1991 is given as under:–

In the matter of the petition filed by Shri Santosh Bhartiya against Smt. Usha Sinha and 29 other members listed at Annexure I and the petition filed by Shri Satya Pal Malik against the aforementioned 30 members both praying for the disqualification under the Tenth Schedule of the Constitution and the Members of the Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.

&

In the matter of the petition filed by Shri Sukhdeo Paswan against Shri V.C. Shukla and six other members listed at Annexure II under Tenth Schedule of the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

&

In the matter of the petition filed by Shri Devendra Prasad Yadav against Shri Shakeelur Rehman under the Tenth Schedule of the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

&

In the matter of expulsion of Shri Chandra Shekhar and 24 other members from Janata Dal given at Annexure III followed by their declaration as unattached Members.

&

In the matter of request of Shri Chandra Shekhar dated 6 November 1990 for recognition of Janata Dal (S) as a political party.

The facts of the above cases in brief are that on 6 November 1990, I received a letter jointly sent by Sarvashri Chandra Shekhar, Devi Lal, Chand Ram and Hukum

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* *See* Lok Sabha Debate dt. 11 January 1991 cc. 235-62; Also *see* Gazette of India Extraordinary Part. II dt. 12 Janurary 1991and Lok Sabha Bulletin. (II) dt. 14 Janurary 1991, Para 1050.

Dev Narayan Yadav, MPs and one member of Rajya Sabha, informing me that Janata Dal had split at all levels in every State and that following the split, 58 members *vide* Annexure IV along with some members of Rajya Sabha had constituted a group representing the break-away faction of Janata Dal and that they had adopted the name of Janata Dal (S).

Earlier on 5 November 1990, I had received a letter from Shri Vishwanath Pratap Singh, Leader of Janata Dal in Parliament informing me that 25 members of Lok Sabha belonging to Janata Dal *vide* Annexure III have been expelled from the party for anti-party activities and were no-longer members of the Janata Dal Legislature Party in Lok Sabha. On receipt of this information, in conformity with the well-established Parliamentary usage and practice and keeping in view that the matter was of party discipline between the Leader and its members, I had decided to declare the said 25 members as 'Unattached' for the purpose of their functioning in the House, allotment of seats, freedom from the Party Whip, etc. These members were informed of my decision the same evening.

On 6 November 1990 at 1700 hours, I received a letter from Shri Vishwanath Pratap Singh claiming that 25 members of the Janata Dal having already been expelled, the residual strength of the claimed split group came to only 33, which is less than one-third of the residual strength of the Janata Dal in Lok Sabha *i.e.* 115 and, therefore, the splinter group should not be recognised. The said communications received from Shri Chandra Shekhar and Shri Vishwanath Pratap Singh about the split were sent to each other for enabling them to furnish additional comments, if any. Shri Chandra Shekhar in a reply dated 6 November and received on 7 November furnished his further comments.

On 7 and 8 November 1990 two petitions were received under Rule 6 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 (hereinafter referred to as Disqualification Rules, 1985) from Shri Santosh Bharatiya and Shri Satya Pal Malik, respectively against 30 members *vide* Annexure I. Out of the 30 Members, Shri Gurdial Singh Saini resigned from Lok Sabha *w.e.f.* 9 November 1990. On being satisfied that the petitions were in order, the petitions were forwarded to the Respondents and their comments have been received. The Respondents had also requested for personal hearing for which an opportunity was given on 7 January 1991.

On 23 November 1990, I received seven petitions from Shri Sukdeo Paswan under Disqualification Rules, 1985. The list of Respondents is at Annexure II. On being satisfied that the petitions were in order, they were forwarded to the Respondents and the comments of the members have since been received. The

members had also requested for personal hearing and accordingly an opportunity was granted to them on 7 January 1991.

On 14 December 1990, I received a petition from Shri Devendra Prasad Yadav, MP praying for disqualification of Dr. Shakeelur Rehman MP on the ground that the latter had voluntarily given up membership of Janata Dal. The petition was referred to Dr. Rehman for his comments, and as per his request an opportunity for personal hearing was also granted to him on 7 January 1991.

The issues to be decided by me are as follows :-

(i) Whether a split took place in the original Janata Dal in terms of Paragraph 3 of the Tenth Schedule;

(ii) Whether the expulsion of 25 members by Shri Vishwanath Pratap Smgh on 5 November 1990 and their being treated as unattached by me has any legal effect on the plea of split; and

(iii) Whether any of the Respondents have incurred any disqualification under Tenth Schedule of the Constitution.

Regarding issues (*i*) and (*ii*) the contentions of four petitioners under the Disqualification Rules and of Shri Vishwanath Pratap Singh may be summarised as follows :–

(a) 25 members were expelled on 5 November 1990 and the fact of expulsion was promptly intimated to the Speaker. The expulsion has occurred prior to any alleged split.

(b) The remaining members claiming a split do not constitute one-third of the remaining strength of the Janata Dal namely 115 and therefore are liable to be disqualified.

(c) It is claimed by the Respondents variously that a split took place at 10.30 AM on 5 November 1990 and even if it is admitted for the sake of argument that the split did occur, it had to be deemed to have occurred on 5 November and members defecting after the 5th, that is those not covered in the list of 58 members and voting against the whip on 7 November or 16 November cannot in any case be covered by the split.

(d) The first condition of a split required under Para 3 of Tenth Schedule, namely, that any split in the Legislature Party has to arise as a result of a split in the original political party has not been fulfilled because Shri Chandra Shekhar himself is reported to have said in the "Hindu" of Delhi edition dated 6 November 1990 that only the Parliamentary Party had split and not the Janata Dal.

The arguments of the Respondents can be summarised as follows :-

(a) That at 9.30 AM on 5 November 1990 there was a split in the Janata Dal on the organisation side in a meeting held at No. 2 Willingdon Crescent, New Delhi. Following this, a meeting of MPs was held and the Parliamentary Party split at 10.30 AM that very day.

(b) The Tenth Schedule does not recognise expulsion on account of anti-party activities outside the House.

(c) The expulsion of 25 members by Shri Vishwanath Pratap Singh is illegal and is malafide directed at countermanding a genuine split.

(d) That Shri Vishwanath Pratap Singh, Leader of Janata Dal in Parliament in a speech on 7 November 1990 gave a call of conscience vote to members of Parliament and thereby the whip issued by the Party stood annulled and rescinded.

(e) In a letter dated 14 November 1990 Shri Harmohan Dhawan purported to be the Chief Whip of the splinter group claimed that 65 members belonging to Janata Dal had joined JD(S) though the letter did not carry signatures of individual members.

(f) That Rajya Sabha and Election Commission have recognised Janata Dal (S) as a separate political party.

Of the 30 members *vide* Annexure I against whom petitions for disqualification are considered Shri Gurdial Singh Saini has resigned and the name of Shri Basavraj Patil does not appear in the list of 58 members which was submitted to me by Shri Chandra Shekhar on 6 November 1990. Since the case against the 28 members is, more or less, similar, they can be discussed together. The case against them is that they had been elected as members of Janata Dal. That they voted against a whip issued by the Whip of the Janata Dal followed by another whip issued by the Leader of the Janata Dal on the 4 November 1990, that they had voted contrary to direction from whips, and that such contravention is evident from voting recorded by Lok Sabha Secretariat. That the split cannot be recognised for reasons already mentioned in para 3 supra and that therefore they are liable to be disqualified under Paragraph 2 of the Tenth Schedule, not having been protected under paragraph 3. In defence, each of the Respondents has stated that there was a split prior to expulsion and that following split they constituted another group namely JD(S). That the expulsion of 25 members should not be taken note of and therefore the split satisfied the criterion stipulated in paragraph 3 of the Tenth Schedule. That in as much as Shri Vishwanath Pratap Singh had

given a call for conscience vote on the 7 November, the whip was not binding on the members.

It is admitted by both parties that a whip was issued by the Janata Dal for the Confidence Motion on 7 November 1990. It is admitted by both parties that the respondents have voted against the Motion of Confidence on 7 November. In support of the claim for split, the Respondents have enclosed copies of minutes of General Body Meeting purported to have been held at 9.30 AM on 5 November 1990, minutes of meeting of the Janata Dal Members of Parliament held at 10.30 AM same day and the copies of press reports. The press reports do not indicate the time of the purported split. While the letter of Shri Vishwanath Pratap Singh was received by the undersigned on 5 November at 1.45 PM, the claim of split by Shri Chandra Shekhar was received only on the 6 November at 1.10 PM. Respondents have referred to news of split being broadcast by official media. The copies of news bulletin not having been presented before me, as far as evidence on the basis of press reports is concerned, there is nothing to show that split occurred prior to the expulsion or prior to the receipt of the letter informing the expulsion of 25 members by Shri Vishwanath Pratap Singh. On the other hand, Shri Vishwanath Pratap singh has argued that in view of a claim made by Shri Chandra Shekhar in the 'The Hindu' dated 6 November 1990, that only the Parliamentary Party had split and not the Janata Dal, an essential condition for recognition of split under paragraph 3 has not been fulfilled. In view of inadequate evidence, I do not wish to go into the legality of expulsion just as I do not want to go into the legality of the meeting of the splinter group namely as to whether or not such meeting was held as per party Constitution. Shri Chandra Shekhar in his letter dated 4 December 1990, and received by Lok Sabha Secretariat on the same day, has annexed Form III purportedly signed by 63 members under the Disqualification Rules, 1985. These forms have also been referred to in the petitions of the respondents, and copy thereof enclosed. Rule 4 of the Disqualification Rules, 1985 provides for intimation to the Speaker by a member regarding *inter alia* change of party status immediately. It is not understood why these forms were not submitted to the undersigned on the 5 November or immediately thereafter when the split is claimed to have taken place. The word 'immediately' has to be contrasted with the requirement of 30 days prescribed under rule 3 of the Disqualification Rules and therefore it has to be presumed that information in Form III has to be submitted more promptly than a leader is required to furnish the information in Form I. It has been argued during personal hearing that a respondent may not be in headquarters and therefore may not be able to send the Form III immediately. While this general claim has been made, no individual

Respondent had made any prayer for specific dispensation on this account and therefore the claim may not be accepted *per se*. There is also no explanation as to why the information was not submitted to the Speaker. It is claimed by the Respondents that the above 28 members were present on 5 November in Delhi at the meeting which resulted in the alleged split but there is no explanation whatsoever as to why these forms were not submitted. This being the only evidence presented by the Respondents referring to the timing of split, I hold that the Respondents have not been able to establish beyond reasonable doubt that the split occurred prior to expulsion. In absence of information in Form III, I have to reply on the only other information available, namely, the letter dated 6 November 1990 of Shri Chandra Shekhar signed by 58 members. Here also certain discrepancies are noticed. While the list submitted by Shri Chandra Shekhar on 6 November contained 58 names, two of the members who had appended their signatures to the list namely Shri Ram Naresh Singh and Shri Mandhata Singh wrote saying that they owed allegiance to Janata Dal led by Shri Vishwanath Pratap Singh. Shri Harmohan Dhawan purported to be the Chief Whip of the Janata Dal (S), wrote to me on 14 November 1990 that 64 members were with the splinter group. In the list submitted by Shri Chandra Shekhar on 4 December 1990 there were 63 names. The petitioners have also referred to the appeal made by Shri Vishwanath Pratap Singh on 7 November during his speech in Lok Sabha on that day. I have carefully perused the whole speech. On a close reading of the speech, I hold that the appeal of Shri Vishwanath Pratap Singh as contained in his speech delivered in the House on 7 November, is an appeal bordering on the rhetoric and would not amount to overriding a specific written direction which is recognised widely and universally as a standard mode of direction in the functioning of political parties. As I have discussed already, the fact that Form III though dated 5 November, was not submitted to me immediately thereafter and in fact was not submitted to me at all but was apparently submitted to Shri Chandra Shekhar who collected it and submitted it to me leads me to conclude that the averment made therein cannot be taken on face value.

The petitioner has also stated that the Chairman, Rajya Sabha has already recognised the formation and recognition of Janata Dal (Samajwadi) in the Rajya Sabha. As per established Parliament traditions, I should not go into that plea. The petitioner has also enclosed a copy of the order of Election Commission dated 27 December 1990 recognising JD(S) as a political party. I have carefully considered the notification referred to. The notification recognised JD(S) with effect from 27 December 1990 and does not throw any light on the status of the party on 5 November or on 7 November or on 16 November.

While from the above, it will be clearly seen that there is no evidence to show that the split occurred prior to expulsion, since there are claims and counter claims about timing of the splits *vis-a-vis* timing of expulsion and since both the actions of expulsion and the meeting of the splinter group have been challenged, I hold that the benefit of doubt should go to the Respondents, who would become disqualified in the event of my not recognising the split to have taken place prior to the expulsion.

There is a widely held view including that of common man, and a view which I share in many respects, that the existing law on defection suffers from several lacunae in regard to substantive matters as well as procedures. While there can be no two opinions that in a democratic system, freedom of dissent has to be an essential ingredient, it has also to be accepted that it should be open and honest. If dissent is honest, it should be ventilated and canvassed openly and need not be clandestine and secretive. Equally important is that honest dissent involves sacrifice and not even remotely motivated with self-aggrandisement. The present goings on in the country are indeed deeply disturbing and distressing and if the situation is allowed to drift, people will lose their faith in the very system. Our country won freedom with enormous sacrifice of millions of our people–known and unknown–and foundation of a free India was laid with moral values and political ethics preached and practised by the Father of the Nation. And I quote from Gandhiji, "If you must dissent, you should take care that your opinions voice your inner-most convictions and are not intended merely as a convenient party cry". Those values alone can sustain our hard won freedom and lend strength to our goal for an egalitarian society, free from any discrimination based on caste, creed, sex, etc. and equality and well being for all. Without taking religion in the usual sense, certain moral fabric is essential for every society to survive and keep it strong. If our ambitions and greed for power overtake the national interest and the interest of the people, surely the future is dark. I do not wish to be a prophet of doom, in fact, I am an incorrigible optimist, and I have great faith in our people who have tremendous resilience to tide over any kind of gravest crisis and it is the will of our people which has always guided us over the ages. I therefore, appeal to this Honourable House of which I am a humble servant and through this House to all concerned to ponder over the situation and address themselves to the main and the only question as to how to keep the torch of our long cherished values of freedom and dignity shining and take the country on its march towards peace, prosperity and happiness.

At the moment, I am bound by the law as it obtains today and I am trying to interpret it and apply it to the present issues before me to the best of my ability and in the best interest of the country. As I have said, in the event of my not recognising the split to have taken place prior to expulsion, these 28 members will stand disqualified, and any benefit of doubt, therefore has to go in their favour. As such, the petitions for disqualification against the aforementioned 28 members are dismissed.

As regards the petition against Shri Basavraj Patil, it is observed that his name did not figure in the list furnished by Shri Chandra Shekhar on 6 November 1990. According to the records of Lok Sabha Secretariat and as admitted by both parties, Shri Patil voted against the Motion of Confidence against party whip on 7 November. In view of my discussions in para 5 above, in as much as the name of Shri Patil does not appear in the list of 58 members submitted by Shri Chandra Shekhar, I cannot hold that he was part of the splinter group, which came into existence on the 5 November 1990. The claim that he belongs to JD(S) on 7 November 1990, does not hold good. As he did not belong to JD(S) on 7 November 1990, he cannot claim to have escaped directions of Janata Dal Party on that day As he cannot be held to have joined the splinter group on 5 November 1990, his declaration under Form III cannot be taken on face value and is clearly an after-thought. The appeal made by Shri Vishwanath Pratap Singh on 7 November on the floor of the House cannot be said tooverride a specific written direction by the party *vide* my observations at para 5 supra. In view of the above, I hold that Shri Basavraj Patil has become disqualified under paragraph 2(1)(b) of the Tenth Schedule and Rule 8(1)(b) of the Disqualification Rules.

As regards the case of Shri Hemendra Singh Banera, it is observed that his name was included in the list of 58 members furnished by Shri Chandra Shekhar. However, Shri Banera handed over two letters on 7 November 1990, one to Lok Sabha Secretariat, and one to me personally. In both the letters, he had stated that he was abiding by the whip of the leader of the Janata Dal and was voting in favour of the Motion moved by Shri Vishwanath Pratap Singh. He also stated that other correspondence bearing his name or signature has to be treated as cancelled. As he made this claim on 7 November, it will be presumed that the signature appended to the letter of Shri Chandra Shekhar dated the 5 November was withdrawn and rescinded. In view of what I have already discussed, the process of split is presumed to have closed on 5 November and therefore anyone subsequently joining the splinter group of Janata Dal shall not be covered by the split for the purpose of paragraph 3 of the Tenth Schedule. In any case, it is neither his claim

nor the claim of anybody else that there was a second split. Shri Banera, therefore, cannot seek any protection under paragraph 3. His contention that there were discussions about reunion of the party, while may be morally sound or otherwise, have no relevance whatsoever for the purpose of Tenth Schedule. I therefore hold that Shri Banera has incurred disqualification under paragraph 2 of the Tenth Schedule read with Rule 8(1) (b) of the Disqualification Rules.

Two members, namely, Shri Mandhata Singh and Shri Ram Naresh Singh whose names appear in the list of 58 members submitted by Shri Chandra Shekhar on 6 November 1990 met me on 7 November and submitted in writing that they owed allegiance to Janata Dal and that they are going to vote in favour of the Motion on 7 November 1990 as per the whip issued by Janata Dal. In view of their averments they cannot be said to have belonged to JD(S) faction.

In view of the discussions above, I recognise Janata Dal (S) as a distinct party consisting of 54 members as at Annexure VI, arising out of a split in Janata Dal on 5 November 1990. From the time of such split that is with effect from the 5 November 1990, I hold under paragraph 3 (b) of the Tenth Schedule that these 54 Members shall belong to Janata Dal (S), which will be deemed to be their original political party for the purpose of sub-paragraph (1) of paragraph 2 of the Tenth Schedule.

Shri Sukdeo Paswan has filed a petition against among others, Shri Manvendra Singh. The case against Shri Manvendra Singh is that he voted in support of the Motion of Confidence on 7 November 1990 in accordance with the whip of Janata Dal, but contravened the whip on 16 November 1990. From office records I observe that Shri Manvendra Singh was absent on 7 November 1990; and therefore the averments made in the petition of Shri Paswan was not correct to this extent. Shri Manvendra Singh has already been recognised to belong to JD(S) *vide* my observation at para 11 supra. He thus came to the discipline of JD(S) with effect from 5 November 1990, and was not subject to the whip of Janata Dal thereafter. Thus being the position, I dismiss the petition of Shri Manvendra Singh.

Five of the petitioners against whom Shri Sukhdeo Paswan has filed similar petitions and who have submitted similar responses are Shri Vidya Charan Shukla, Dr. Bengali Singh, Shri Sarwar Hussain, Shri Bhagey Gobardhan and Shri Devananda Amat. The allegation against them is that the respondents had been members of the Janata Dal Legislature Party, that in obedience to the whip of the Janata Dal, the respondents had voted for the Motion of Confidence on the 7 November 1990 and that the respondents did not join the splinter group on the 5 November 1990 or on 7 November 1990, that it was claimed by the splinter group

that the split was over on 5 November 1990 and in any case on 7 November 1990, that a three-line whip was issued to all the members including the respondents directing the members to vote against the Motion of Confidence moved by the Prime Minister Shri Chandra Shekhar and that the respondents voted against the whip, that the voting against the whip has not been condoned by the party, that the respondents are not covered by paragraph 3 of the Tenth Schedule and each of the respondents is, therefore, liable to be disqualified under para 2(1) (a) and 2(1) (b) of the Tenth Schedule. In reply, the respondents have stated that on the 5 November 1990, the party had split, both at the organisational and the legislature levels, that the split took place on 5 November 1990, that it had more than one-third of the strength of Janata Dal, that no notice should be taken of the expulsion, that including 63 members they have signed Form III claiming party affiliation to JD(S) at 10.30 AM on 5 November 1990, that after the aforesaid split on 5 November leaders of both the groups had started negotiation for coming together again for reuniting the party, that it was in this atmosphere that the respondents voted in favour of Shri Vishwanath Pratap Singh on 7 November 1990, that having been outside the jurisdiction of Janata Dal with effect from 5 November 1990, the whip of the Janata Dal was not binding on them either on 7 November 1990 or on 16 November 1990.

I observe that these five respondents are not in the list of 54 members who have been recognised to constitute JD(S). There is one factual error in the petition against Dr. Bengali Singh. While the petition states that Dr. Bengali Singh voted in support of the Motion on 7 November 1990, in fact he was absent on that day as the record would show. However, this does not have any material effect on the cause of action, namely, that he had voted against the whip on the 16 November 1990. His abstention on 7 November 1990 which also amounts to violation of party whip does not seem to have been condoned. In view of what has already been discussed, the split is presumed to have taken place on 5 November 1990 constituting of 54 members. The split has to be only one-time affair, as even a cursory reading of the Tenth Schedule would show. The declaration in Form III purported to have been signed on 5 November cannot be relied upon as the same was not submitted immediately, and in any case was not submitted by the member before me. The fact that four respondents had voted in accordance with the whip on 7 November further proves that the Form III furnished by the respondents is an after thought. The other respondent Dr. Bengali Singh had made certain claims regarding his voting on 7 November, which having self-contradictions need not be gone into. In any case these five respondents did not figure in the list submitted by Shri Chandra

Shekhar on 6 November 1990 and this has not been explained by the respondent. The plea that there were hopes of rapprochement between the two factions, while could have moral ramifications have no implications as far as the proceedings under the Tenth Schedule are concerned. The five respondents, therefore, did not belong to JD(S) on 5 November 1990, the day on which the split came into being and as they do not constitute one-third of the residual strength of Janata Dal they are not protected under paragraph 3. I, therefore, hold that Shri Vidya Charan Shukla, Dr. Bengali Singh, Shri Sarvar Hussain, Shri Bhagey Gobardhan and Shri Devananda Amat stand disqualified under paragraph 2 of the Tenth Schedule read with Rule 8(1) (b) of the Disqualification Rules, 1985.

In respect of Dr. Shakeelur Rehman, the petition alleges that on 21 November he was sworn in as a member of the Council of Ministers in Shri Chandra Shekhar's Government, and that this is tantamount to giving up membership voluntarily for the purpose of paragraph 2(1) (a) of the Tenth Schedule. It is admitted that Dr. Shakeelur Rehman was a member of Janata Dal. His name appears in the list submitted by Shri Chandra Shekhar on 4 December 1990 and Form III purported to have been signed by him on 5 November 1990 is enclosed in the letter of Shri Chandra Shekhar. Dr. Rehman has thus given up membership of his party, namely, Janata Dal in the meaning of paragraph 2 (a) of the Tenth Schedule. In his defence, as also in the oral submissions, it is pleaded that there were some discussions which indicated a possibility or restoration of *status quo ante,* that keeping this in view he had voted on 7 November 1990 and 16 November 1990 in favour of Shri Vishwanath Pratap Singh but had decided to join the Government subsequently. As discussed supra, the split is recognised with effect from the 5 November 1990 and split for the purpose of the Tenth Schedule is only a one time affair, and cannot be an on-going or continuous process or phenomenon. The Form III purportedly signed on 5 November 1990 is clearly an after-thought, keeping in view the circumstances, namely, that the respondent was not in the list of members submitted by Shri Chandra Shekhar on 6 November 1990 and also on 16 November 1990, that the alleged revised Form III was not submitted to me on or immediately after 5 November 1990 and that his name does not appear in the list dated 14 November 1990 submitted by Shri Harmohan Dhawan. The plea that on 7 November 1990 and 16 November 1990 he belonged to JD(S) and therefore subject to whip of JD(S) and not that of JD, is clearly an afterthought for the same reason. It has been stated during personal hearing that once a member makes a 'claim' about his party status, the 'claim' should be accepted, and that this should be the end of the matter. Even conceding for the sake of argument that a claim validly

made could be accepted at face value, it is observed that the claim made here is not validly made in as much as (i) claim has not been made before the Speaker as required under the Disqualification Rules, 1985 (ii) claim has not been made immediately, as required under the Disqualification Rules. Therefore, the claim is an after-thought. As such, while Dr. Rehman is liable to be disqualified under para 2(1)(a), he cannot have the protection of the split under para 3 of the Tenth Schedule. I, therefore, declare that Dr. Shakeelur Rehman has become disqualified under the Tenth Schedule and Rule 8 (1) (b) of the Disqualification Rules.

Order

In exercise of the powers conferred upon me by the Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rule 1985, I, Rabi Ray, Speaker, Lok Sabha, hereby order that since 54 members whose names I would state hereafter constitute a faction which has arisen as a result of the split in the original Janata Dal Party and such group consists of not less than one-third of the members of original party, this faction shall be deemed to be a new political party in terms of para 3 of the Tenth Schedule and that these 54 members shall be treated as members of the Janata Dal (S) which would be their original party hereafter for the purpose of paragraph 3 of the Tenth Schedule.

1. Shri Balgopal Mishra
2. Shri Babanrao Dhakne
3. Shri Bega Ram Chauhan
4. Shri Bhakta Charan Das
5. Dr. Bhagwan Dass Rathor
6. Shri Chandra Shekhar
7. Shri Chand Ram
8. Shri Dasai Chowdhary
9. Shri Daulat Ram Saran
10. Shri Devi Lal
11. Shri Dhanraj Singh
12. Shri Dharmesh Prasad Varma
13. Shri Harmohan Dhawan
14. Shri Het Ram
15. Shri Hukumdev Narayan Yadav
16. Shri Ch. Jagdeep Dhankhar
17. Shri Jai Parkash
18. Shri Kalpnath Sonkar
19. Shri Kalyan Singh Kalvi
20. Shri Kapil Dev Shastri
21. Shri Lalit Vijoy Singh
22. Smt. Maneka Gandhi
23. Shri Nakul Naik

24. Shri Raj Mangal Pande
25. Shri Ram Bahadur Singh
26. Shri Rajmangal Mishra
27. Shri Ramjee Lal Yadava
28. Shri Ramji Lal Suman
29. Shri Yuvraj
30. Shri Mangaraj Mallik
31. Shri Manvendra Singh
32. Shri A.N. Singh Deo
33. Shri Rao Birendra Singh
34. Shri Janeshwar Mishra
35. Shri Brij Bhushan Tiwari
36. Shri Subodh Kant Sahay
37. Smt. Usha Sinha
38. Shri Chhotey Singh Yadav
39. Shri Ram Singh Shakya
40. Shri Ramsewak Bhatia
41. Shri Uday Pratap Singh
42. Shri Keshari Lal
43. Shri Ram Sagar
44. Shri Baleshwar Yadav
45. Shri Ram Prasad Chaudhary
46. Shri Prabhatsinh Chauhan
47. Shri G.K. Shekhda
48. Shri Manubhai Kotadia
49. Shri Balvantbhai Manvar
50. Shri Arjunbhai Patel
51. Shri M.M. Patel
52. Shri Shantilal Purushottamdas Patel
53. Shri N.J. Rathva
54. Shri JayantiLal Shah

In exercise of powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution of India and the Rules thereunder, I, Rabi Ray, Speaker, Lok Sabha, hereby declare that the following 7 members of Lok Sabha have

incurred disqualification for being members of Lok Sabha in terms of paragraph 2(1)(b) of the said Schedule:–

1. Shri Basavraj Patil
2. Shri Hemendra Singh Banera
3. Shri Vidya Charan Shukla
4. Dr. Bengali Singh
5. Shri Sarwar Hussain
6. Shri Bhagey Gobardhan
7. Shri Devananda Amat

Accordingly, the aforesaid members have ceased to be members of Lok Sabha with immediate effect, and their seats shall thereupon fall vacant.

In exercise of powers conferred upon me under Paragraph 6 of the Tenth Schedule of the Constitution of India and the Rules thereunder, I, Rabi Ray, Speaker, Lok Sabha, hereby declare that Dr. Shakeelur Rehman, Member, Lok Sabha had incurred disqualification for being a member of Lok Sabha in terms of paragraph 2(1)(a) of the said Schedule. Accordingly, Dr. Shakeelur Rehman has ceased to be a Member of Lok Sabha with immediate effect, and his seat shall thereupon fall vacant.

Copies of this order be forwarded to the petitioners, the members in relation to whom the petitions are made and to the Leaders of the Janata Dal and Janata Dal (S).

Annexure -I

1. Smt. Usha Sinha
2. Shri Janeshwar Mishra
3. Shri Basavraj Patil
4. Shri Ramjee Lal Yadava
5. Shri Ram Bahadur Singh
6. Shri Rao Birendra Singh
7. Shri Brij Bhushan Tiwari
8. Shri Hukumdev Narayan Yadav
9. Shri RamSewak Bhatia
10. Shri Ram Prasad Choudhary
11. Shri Chhotey Singh Yadav
12. Shri Ram Singh Shakya

13. Shri Raj Mangal Pande
14. Shri Shantilal Purushottamdas Patel
15. Shri Nakul Naik
16. Shri Ch. Jagdeep Dhankhar
17. Shri G.S. Saini
18. Shri Yuvraj
19. Shri Balwant Manwar
20. Shri A.N. Singh Deo
21. Shri Baleshwar Yadav
22. Shri Uday Pratap Singh
23. Shri Ram Sagar
24. Shri Bega Ram Chauhan
25. Shri Dasai Choudhary
26. Shri Daulat Ram Saran
27. Shri Devi Lal
28. Shri Dhanraj Singh
29. Shri Keshari Lal
30. Shri Mangaraj Mallik

Annexure -II

1. Shri V.C. Shukla
2. Dr. Bengali Singh
3. Shri Sarvar Hussain
4. Shri Bhagey Gobardhan
5. Shri Manvendra Singh
6. Shri Hemendra Singh Banera
7. Shri D. Amat

Annexure -III

1. Shri Chand Ram
2. Shri Chandra Shekhar
3. Shri Prabhatsinh H. Chauhan
4. Shri Bhakta Charan Das
5. Shri Babanrao Dadaba Dhakne

6. Shri Harmohan Dhawan
7. Smt. Maneka Gandhi
8. Shri Het Ram
9. Shri Jai Prakash
10. Shri Kalyan Singh Kalvi
11. Shri Manubhai Kotadia
12. Shri Balgopal Mishra
13. Shri RajMangal Mishra
14. Shri Arjunbhai Patel
15. Shri M.M. Patel
16. Shri N.J. Rathva
17. Dr. Hari Bhagwan Das Rathor
18. Shri Subodh Kant Sahay
19. Shri Jayanti Lal Shah
20. Shri Kapil Dev Shastri
21. Shri G.K. Shekhda
22. Shri L.V. Singh
23. Shri Kalpnath Sonkar
24. Shri Ramji Lal Suman
25. Shri Dharmesh Prasad Varma

Annexure -IV

1. Shri Balgopal Mishra
2. Shri Babanrao Dhakne
3. Shri Baga Ram Chauhan
4. Shri Bhakta Charan Das
5. Dr. Bhagwan Dass Rathor
6. Shri Chandra Shekhar
7. Shri Chand Ram
8. Shri Dasai Choudhary
9. Shri Daulat Ram Saran
10. Shri Devi Lal
11. Shri Dhanraj Singh
12. Shri Dharmesh Prasad Varma

13. Shri Harmohan Dhawan
14. Shri Het Ram
15. Shri Hukumdev Narayan Yadav
16. Shri Ch. Jagdeep Dhankhar
17. Shri Jaiprakash
18. Shri Kalpnath Sonkar
19. Shri Kalyan Singh Kalvi
20. Shri Kapil Dev Shastri
21. Shri Lalit Vijoy Singh
22. Smt. Maneka Gandhi
23. Shri Nakul Naik
24. Shri Raj Mangal Pande
25. Shri Ram Bahadur Singh
26. Shri Ram Naresh Singh
27. Shri Raj Mangal Mishra
28. Shri Ramjee Lal Yadava
29. Shri Ramjee Lal Suman
30. Shri Gurdial Singh Saini
31. Shri Yuvraj
32. Shri Mangaraj Mallik
33. Shri Manvendra Singh
34. Shri A.N. Singh Deo
35. Shri Rao Birendra Singh
36. Shri Janeshwar Mishra
37. Shri Brij Bhushan Tiwari
38. Shri Subodh Kant Sahay
39. Smt. Usha Sinha
40. Shri Chhotey Singh Yadav
41. Shri Ram Singh Shakya
42. Shri Ramsewak Bhatia
43. Shri Uday Pratap Singh
44. Shri Keshari Lal
45. Shri Ram Sagar
46. Shri Baleshwar Yadav

47. Shri Ram Prasad Choudhary
48. Shri Prabhatsinh Chauhan
49. Shri G.K. Shekhda
50. Shri Manubhai Kotadia
51. Shri Balvantbhai Manvar
52. Shri Arjunbhai Patel
53. Shri M.M. Patel
54. Shri Shantilal Purushottamdas Patel
55. Shri N.J. Rathva
56. Shri Jayanti Lal Shah
57. Shri Hemendra Singh Banera
58. Shri Mandhata Singh

Annexure - V

1. Smt. Usha Sinha
2. Shri Janeshwar Mishra
3. Shri Ramjilal Yadava
4. Shri Ram Bahadur Singh
5. Shri Rao Birendra Singh
6. Shri Brij Bhushan Tiwari
7. Shri Hukumdev Narayan Yadav
8. Shri Ramsewak Bhatia
9. Shri Ram Prasad Choudhary
10. Shri Chhotey Singh Yadav
11. Shri Ram Singh Shakya
12. Shri Raj Mangal Pande
13. Shri Shantilal Purushottamdas Patel
14. Shri Nakul Naik
15. Shri Ch. Jagdeep Dhankhar
16. Shri Yuvraj
17. Shri Balwant Manvar
18. Shri A.N. Singh Deo
19. Shri Baleshwar Yadav
20. Shri Uday Pratap Singh

21. Shri Ram Sagar
22. Shri Bega Ram Chauhan
23. Shri Dasai Choudhary
24. Shri Daulat Ram Saran
25. Shri Devi Lal
26. Shri Dhanraj Singh
27. Shri Keshari Lal
28. Shri Mangaraj Mallik

Annexure -VI

1. Shri Balgopal Mishra
2. Shri Babanrao Dhakne
3. Shri Bega Ram Chauhan
4. Shri Bhakta Charan Das
5. Dr. Bhagwan Dass Rathor
6. Shri Chandra Shekhar
7. Shri Chand Ram
8. Shri Dasai Choudhary
9. Shri Daulat Ram Saran
10. Shri Devi Lal
11. Shri Dhanraj Singh
12. Shri Dharmesh Prasad Varma
13. Shri Harmohan Dhawan
14. Shri Het Ram
15. Shri Hukumdev Narayan Yadav
16. Shri Ch. Jagdeep Dhankhar
17. Shri Jai Prakash
18. Shri Kalpnath Sonkar
19. Shri Kalyan Singh Kalvi
20. Shri Kapil Dev Shastri
21. Shri Lalit Vijoy Singh
22. Smt. Maneka Gandhi
23. Shri Nakul Naik
24. Shri Raj Mangal Pande

25. Shri Ram Bahadur Singh
26. Shri Raj Mangal Mishra
27. Shri Ramji Lal Yadava
28. Shri Ramji Lal Suman
29. Shri Yuvraj
30. Shri Mangaraj Mallik
31. Shri Manvendra Singh
32. Shri A.N. Singh Deo
33. Shri Rao Birendra Singh
34. Shri Janeshwar Mishra
35. Shri Brij Bhushan Tiwari
36. Shri Subodh Kant Sahay
37. Smt. Usha Sinha
38. Shri Chhotey Singh Yadav
39. Shri Ram Singh Shakya
40. Shri Ramsevak Bhatia
41. Shri Uday Pratap Singh
42. Shri Keshari Lal
43. Shri Ram Sagar
44. Shri Baleshwar Yadav
45. Shri Ram Prasad Choudhary
46. Shri Prabhatsinh Chauhan
47. Shri G.K. Shekhda
48. Shri Manubhai Kotadia
49. Shri Balvantbhai Manvar
50. Shri Arjunbhai Patel
51. Shri M.M.Patel
52. Shri Shantilal Purushottamdas Patel
53. Shri N.J.Rathva
54. Shri Jayanti Lal Shah

(4) Decision of Shri Shivraj V. Patil, Speaker, Tenth Lok Sabha under Tenth Schedule to the Constitution (Janata Dal Case 1992-93)*

The Decision of the Speaker, Lok Sabha dated 1 June 1993 under the Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 is given as under:–

Before Hon'ble Speaker, Lok Sabha

In the matter of application filed by 20 members of Janata Dal Legislature Party on 7 August 1992.

&

In the matter of four petitions filed by Shri V.P. Singh against S/Shri Ram Sundar Das, Govind Chandra Munda, Ghulam Mohammed Khan and Ram Badan, MPs.

&

In the matter of eight petitions filed by Shri V.P. Singh against S/Shri Anadi Charan Das, Surya Narayan Yadav, Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Arjun Singh Yadav, Abhay Pratap Singh and Upendra Nath Verma, MPs.

&

In the matter of two composite petitions filed by Shri Srikanta Jena against (i) S/Shri Ajit Singh, Rasheed Masood, Harpal Singh Panwar and Satyapal Singh Yadav and (ii) S/Shri Rajnath Sonkar Shastri, Ram Nihor Rai, Ram Awadh and Sheo Sharan Verma, MPs.

Facts of the case

Main Points in the Pleadings

1. The Janata Dal got 59 members elected to the Tenth Lok Sabha. Shri V.P. Singh was the Leader of the Janata Dal Parliamentary Party.

2. On 7 August 1992, S/Shri Ram Lakhan Singh Yadav, Ram Sharan Yadav, Ram Sundar Das, Upendra Nath Verma, Suryanarayan Yadav, Govind Chandra Munda, Anadi Charan Das, Ajit Singh, Rasheed Masood, Harpal Singh Panwar, Abhay Pratap Singh, Ghulam Mohammed Khan, Ram Nihor Rai, Ram Badan, Ram Awadh, R. Sonkar Shastri, Sheo Sharan Verma, Satyapal Singh Yadav, Arjun

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* *See* Gazette of India Extraordinary Part. (II) dt. 1 June 1993 and Lok Sabha Bulletin (II) dt. 1 June 1993, para No. 2125.

Singh Yadav and Roshan Lal gave an application to the Speaker asking that they should be given separate seats in the Lok Sabha. It is marked as "D1".

3. The application bore the signatures of the above mentioned 20 members of the Lok Sabha and also four more signatures. These four signatories did not accompany the 20 members when the application was delivered to the Speaker.

4. The 20 members were asked to sign the application again, confirming that they had put their signatures on the application of their free will.

5. A photocopy of the said application was sent to Shri V.P. Singh for his comments.

6. Shri V.P. Singh filed his written statement on 11 August 1992.

7. In essence what is stated in the written statement is as follows:

(i) S/Shri Ajit Singh, Rasheed Masood, Harpal Singh Panwar and Satyapal Singh Yadav, all members of the Lok Sabha, were expelled from the primary membership of Janata Dal by Shri. S.R.Bommai, President of the Janata Dal. Shri Ajit Singh was expelled on 26 December 1991. The three others were expelled in the month of January 1992.

(ii) S/Shri R. Sonker Shastri, Ram Nihore Rai, Ram Awadh and Sheo Sharan Verma, all Members of the Lok Sabha were expelled from the primary membership of the Party by Shri S.R. Bommai, President of the Janata Dal on 19 July 1992.

(iii) As such, the eight members mentioned above had also lost their membership of the Janata Dal Legislature Party.

(iv) They could not thus form part of the group of 20 members seeking to separate from their original Party *i.e.* Janata Dal.

(v) S/Shri Ram Sunder Das, Govind Chandra Munda, Ghulam Mohammed Khan and Ram Badan, all members of the Lok Sabha, had violated the whips issued to them, for voting in favour of the No-confidence Motion moved against the Government on 17 July 1992. Under the provision of Rule 2(1)(b) of the Tenth Schedule of the Constitution of India, they had incurred disqualification, and they had ceased to be members of the Lok Sabha from 17 July 1992.

(vi) Thus, out of 20 members, 12 members had incurred disqualification and ceased to be the members of the Lok Sabha.

(vii) S/Shri Ram Sharan Yadav, Abhay Pratap Singh, Ram Lakhan Singh Yadav, Anadi Charan Das, Roshan Lal, Arjun Singh Yadav, Upendra Nath Verma and Surya Narayan Yadav – All eight members

of the Lok Sabha, could not form a group of members consisting of one-third of members of the Janata Dal Parliamentary Party who could separate from Janata Dal as per the provision of para 3 of the Tenth Schedule of the Constitution of India. They too had incurred disqualification under para 2 (1)(a) of the Tenth Schedule and ceased to be the members of Lok Sabha from 7 August 1992.

(viii) So, the application of the said 20 members should be rejected.

8. In terms of para 2(1)(b) of the Tenth Schedule, Shri V.P. Singh filed petitions against S/Shri Ram Sundar Das, Govind Chandra Munda, Ghulam Mohammed Khan and Ram Badan, all members of the Lok Sabha, on 11 August 1992.

9. In essence, the relevant points in the petitions are identical. They are as follows:

(i) The Respondents were directed to vote in favour of the No-confidence Motion moved against the Government.

(ii) On 17 July 1992, voting took place on the said Motion.

(iii) The Respondents abstained from voting and violated the whip issued to them voluntarily.

(iv) Therefore, they incurred the disqualification and ceased to be the members of the Lok Sabha from 17 July 1992.

(v) The Petitioner sought a declaration to that effect.

10. The Respondents filed their written statements on 19 August 1992. In essence, they stated that:

(i) They had not violated the whips voluntarily.

(ii) They tried to vote on the Motion as per the directions of the Party.

(iii) But, due to the reason, given in para 11 of each of the written statements, they could not abide by the whips issued to them.

(iv) Their acts were involuntary and so they were not liable to be disqualified.

11. In para 11 of his written statement, Shri Ram Sundar Das says, in essence that–

(i) On the day of voting on the No-confidence Motion, he was resting in the Library of the Parliament, as he was not well due to Blood Pressure.

(ii) When the Division Bell rang, he rushed to the Lok Sabha Chamber.

(iii) However, by the time he reached the entrance of the Lok Sabha

Chamber, the doors were closed and he could not enter the House.

(iv) He wanted to vote in favour of the Motion, but could not.

(v) His act of not voting was involuntary.

(vi) So, he was not liable to be disqualified.

12. In para 11 of his written statement, Shri Govind Chandra Munda, in essence, says that–

(i) He was not well for three days on 15, 16 and 17, July 1992 and was suffering from acute pain in his neck and body due to cervical spondylitis.

(ii) On 17 July 1992, he attended the morning Session of the Lok Sabha. But, in the afternoon, he went to his house because he felt unwell and took some herbal medicine which made him unconscious.

(iii) He wanted to vote on the Motion. He had kept his Party Leader informed that if he was required to be present in the House to vote, he should be taken in an ambulance with the approval of the doctor, to the Lok Sabha, to vote on the Motion. But that was not done.

(iv) His abstention from voting was involuntary.

(v) So, he was not liable to be disqualified.

13. In para No. 11 of his written statement, Shri Ghulam Mohammed Khan, in essence, says that–

(i) He was suffering from Diabetes and other ailments and was not well on 17 July 1992 and on two days before that date.

(ii) He was admitted in the Ram Manohar Lohia Hospital and was in the Hospital on 17 July 1992.

(iii) He wanted to vote on the Motion.

(iv) So, he had informed the Party Leader that if his presence in the House was necessary, he could be taken to the House, with the consent of the doctor.

(v) His act of not voting was involuntary.

(vi) So, he was not liable to be disqualified.

14. In para 11 of his written statement, Shri Ram Badan says that–

(i) He was present in the Lok Sabha on 1 July 1992 and pressed the Button, supporting the Motion.

(ii) His eye sight is weak so he could not see on the Board to find out if his vote was rightly recorded.

(iii) He asked the attendant in the House, who was giving slips to the

Members to correct their votes wrongly recorded, if his vote was recorded. And he was informed by the attendant that his vote was recorded.

(iv) Afterwards, he found out that his vote was not recorded.

(v) He wanted to vote in favour of the Motion.

(vi) He did not violate the whip voluntarily.

(vii) Hence, he was not liable to be disqualified.

15. In terms of para 2(1)(a) of the Tenth Schedule, on 22 August 1992 Shri V.P. Singh filed eight petitions against S/Shri Ramsharan Yadav, Abhay Pratap Singh, Ram Lakhan Singh Yadav, Anadi Charan Das, Roshan Lal, Arjun Singh Yadav, Upendra Nath Verma and Surya Naryan Yadav, all members of the Lok Sabha.

16. In essence, the contents of the Petition are identical, except the names of the respondents are as follows:

(i) S/Shri Ajit Singh, Rasheed Masood, Harpal Singh Panwar, Satyapal Singh Yadav, R. Sonker Shastri, Ram Nihore Rai, Ram Awadh and Sheo Sharan Verma were expelled from the primary membership of Janata Dal, by the President of the Party Shri S.R. Bommai. So, they had lost their membership of the Legislature Party. They formed one group.

(ii) S/Shri Ram Sundar Das, Govind Chandra Munda, Ghulam Mohammed Khan and Ram Badan had violated the whip issued to them on 17 July 1992 and had incurred liability of disqualification under 2(1)(b) of the Tenth Schedule and ceased to be members of the Lok Sabha from 17 July 1992. They formed the second group.

(iii) The eight respondents formed the third group.

(iv) The three groups could not form one composite group of members to be able to separate from the Janata Dal, without incurring the liability of disqualification.

(v) The respondents could not enjoy the immunity provided in para 3(a)(i) of the Tenth Schedule, as they were not one-third of the 51 members of the Janata Dal, on 7 August 1992, as the eight members who were expelled and the four members who had ceased to be members of the Lok Sabha from 17 July 1992, could not be counted in the group along with them.

(vi) Janata Dal was not split outside the Parliament, as required, to allow the Legislature Party of Janata Dal to split legally.

(vii) The petitioner prays for declarations that the respondents are

disqualified and cease to be members of the Lok Sabha from 7 August 1992.

17. The respondents filed their written statements on 31 August 1992.

18. In essence, they state that–

(i) The eight members could not be expelled by the party leaders as per the Tenth Schedule of the Constitution of India.

(ii) The four members had not voluntarily abstained from voting and had not lost their membership of the Lok Sabha.

(iii) On 7 August 1992, Janata Dal Legislature Party had 59 members.

(iv) On 7 August 1992, Janata Dal Legislature Party had split.

(v) 20 members who had formed one group and were more than one-third of the members of the Janata Dal Legislature Party and sought permission to sit separately and split the party, had not incurred disqualification and did not cease to be Members of the Lok Sabha in view of the provision of para 3(a) (i) of the Tenth Schedule of Constitution of India.

(vi) Ajit Singh faction claimed to be the original Janata Dal.

(vii) Hence, the petitions deserved to be disallowed.

19. On 3 October 1992, Shri Srikanta Kumar Jena, member of Lok Sabha and Chief Whip of the Janata Dal Parliamentary Party filed one petition against S/Shri Ajit Singh, Rasheed Masood, Harpal Singh Panwar and Satyapal Singh Yadav, in terms of para 2(1)(a) and under para 6 of the Tenth Schedule.

20. In essence, the main points made in the Petition are that–

(i) The respondents claimed that on 5 February 1992, the Janata Dal was split and Shri Ajit Singh was endorsed as the President of the Party.

(ii) When the split took place on 5 February 1992, there were only four members form the Lok Sabha who were part of the group splitting the Party.

(iii) The four members were not equal to one-third of the members of Janata Dal in Lok Sabha to enjoy immunity under para 3(a)(i) of the Tenth Schedule of the Constitution of India.

(iv) Four members of the Janata Dal had incurred disqualification and lost their membership of Lok Sabha on 17 July 1992 for having violated the whips.

(v) The petitioner had stated that the four respondents and other four members were expelled from the primary membership of Janata Dal and as such had lost their membership of Janata Dal in Parliament.

(vi) In view of the clear admission given by the respondent that they had split the Party on 5 February 1992, in the written statement filed by them and in the Statements given before the Election Commission, the petitioner prays that the respondents be declared to have incurred disqualification and lost their membership of the Lok Sabha with effect from 5 February 1992.

21. The respondents filed their written statement on 4 November 1992.

22. In essence, the respondents stand is that–

(i) The petitioner cannot be allowed to approbate and reprobate.

(ii) The petitioner cannot say that the respondents are not members of Janata Dal and Janata Dal Parliamentary Party, as they were expelled from the Party and also that they should be declared as disqualified and ceased to be members of the Lok Sabha from 5 February 1992.

(iii) The group of respondents is the original Janata Dal and as such all the members of the Party in Parliament belong to their group unless and until they specifically declare other-wise.

(iv) The respondents deny other contents of the Petition.

(v) The respondents pray that the Petition be dismissed.

23. On 3 October 1992, Shri Srikanta Jena, member of Lok Sabha and Chief Whip of Janata Dal Parliamentary Party filed one petition against S/Shri R. Sonker Shastri, Ram Nihore Rai, Ram Awadh and Sheo Sharan Verma, all members of Lok Sabha, in terms of para 2(1)(a) of the Tenth Schedule to the Constitution of India.

24. In essence, the petitioner says that–

(i) Shri Ajit Singh and three others and the respondents in this case were expelled by the Party.

(ii) Shri Ram Sundar Das and three others had violated the whips and incurred disqualification and ceased to be the members of the Lok Sabha from 17 July 1992.

(iii) Shri Ajit Singh and three other members of Parliament claimed in clear terms that on 5 February 1992, they had split from Janata Dal and that they belonged to the faction which was the original Janata Dal. This claim was made by them in the written

statements filed by them, and also the statements filed by them before the Election Commission.

(iv) Thus, Shri Ajit Singh and other three members formed a separate Party in terms of para 3(b) of the Tenth Schedule.

(v) On 7 August 1992, 20 members filed an application before the Speaker, seeking a declaration that they had split and asking for separate seats in the Lok Sabha.

(vi) As Shri Ajit Singh and three other members had formed a separate Party, they could not be a part of the group of Janata Dal, separating from the original Party.

(vii) Remaining 16 members could not be group consisting of one-third members of Janata Dal in Parliament. So, they incurred disqualification.

(viii) The respondents thus incurred disqualification and ceased to be members of the Lok Sabha with effect from 7 August, 1992 in terms of para 2(1)(a) of the Tenth Schedule for having not acquired the immunity in terms of 3 (a) (i) of the same.

25. The respondents filed their written statements on 4 November 1992.

26. In essence, the stand of the respondents is that–

(i) The Petitioner should not be allowed to approbate and reprobate.

(ii) They claim immunity under para 3(a) (i) of the Tenth Schedule.

(iii) The faction of Janata Dal to which they belong is the original Janata Dal and as such all the members of Janata Dal in Parliament belong to their faction unless they claimed otherwise.

(iv) All other contents regarding expulsion and disqualification on the ground of violation of whips by other members and also other contents are denied.

(v) The respondents pray that the petition be dismissed.

How the Proceedings were conducted ?

27. The application given by the 20 members and 12 Petitions filed by Shri V.P. Singh and two Petitions by Shri Srikanta Kumar Jena, have many common points. Therefore, with agreement between the Parties, it was decided that all the Petitions and the application would be heard and decided jointly.

28. The Parties to the dispute were allowed to plead their cases themselves as well as through their lawyers. They filed their pleadings, examined the witnesses and argued on points of law and facts through their lawyers, who did their tasks excellently, cordially and justly.

29. Broadly, the Civil Procedure Code was followed in conducting the proceedings.

30. Wherever it could not be followed, the principles of natural justice were followed.

31. The leaders of the political parties in the Lok Sabha were allowed to put forth their views on legal points orally as well as in writing.

32. The proceedings were allowed to be watched and reported by the Press and the media.

33. Documentary and oral evidence was adduced and produced by the Parties.

34. The lawyers of the Parties advanced detailed arguments which continued for about 20 hours.

35. The evidence and the arguments were recorded verbatim. They are available on audio cassettes too.

36. The pleadings, the evidence and the arguments are compiled in the form of paper books.

37. The points at issue were listed and on them evidence was allowed to be produced and arguments were heard.

38. The points at issue were finalised after hearing the Parties. The Parties, however, did not strictly follow the points at issue while arguing the case.

The decision in the subsequent paras gives findings on the issues in a general manner.

Issues

Issues relating to Document D1

(i) Is D1 filed under the Constitution of India, any other law or the Rules of Procedure of Lok Sabha ?

(ii) What do the signatories claim under D1 ?

(iii) At what time and in what manner the claims under the Tenth Schedule of the Constitution of India are to be proved ?

(iv) Can the leader of a political party expel a member of his party and terminate his membership of the Legislative party, so as to change his rights, obligations and immunities given under the Constitution of India, other laws or the Rules of Procedure in Lok Sabha ?

(v) What is the significance of the members sitting separately at the instance of their party leader on their expulsion from their Party ?
Does it have any significance for interpreting and enforcing the Tenth Schedule of the Constitution of India ?

(vi) What is the significance of the members sitting separately at their own instance ? Does it have any significance for interpreting and enforcing the Tenth Schedule of the Constitution of India ?

(vii) What Order ?

Issues relating to violation of Whip

(i) Does the petitioner prove that respondent violated the Whip voluntarily and if so, the respondent ceased to be a member of Parliament with effect from 17 August 1992 ?

(ii) Does the respondent prove that he did not voluntarily refrain from voting ?

(iii) What Order ?

Issues relating to voluntarily giving up the Membership of the Political Party

(i) Does the petitioner prove that the respondent has become liable to be disqualified under para 2(1) (a) of the Tenth Schedule of the Constitution of India by being a signatory to Document D1 ?

(ii) Does the respondent prove that the immunity provided by para 3 of the Tenth Schedule is available to him ?

(iii) What Order ?

Issues relating to case of Shri Ajit Singh and three others

(i) Does the petitioner prove that Shri Ajit Singh and three others have become liable to be disqualified under para 2(1)(a) of the Tenth Schedule of the Constitution of India, by constituting a separate faction of the Janata Dal Party ?

(ii) Do the respondents prove that the immunity granted by para 3 of the Tenth Schedule is available to them ?

(iii) What Order ?

Issues relating to the case of Shri Rajnath Sonkar Shastri and three others

(i) Does the petitioner prove that Shri Rajnath Sonkar Shastri and three others have become liable to be disqualified under para (1) (a) of the Tenth Schedule of the Constitution of India, by being a signatory to the Document D1 ?

(ii) Do the respondents prove that the immunity granted by para 3 of the Tenth Schedule is available to them ?

(iii) What Order ?

Law Points

39. By and large, following were the law points which came up for discussion through the course of proceedings.

How the Law of Anti-defection should be interpreted ?

40. The Tenth Schedule of the Constitution of India is treated and popularly known as the law of anti-defection.

41. It is framed to curb and control the menace of crossing of the floor by the elected representatives of the people in Legislatures.

42. Before it came into existence, the legislators could vote as they liked, could leave their parties and could join other parties, without incurring any liability or disqualification or losing their membership of the legislature. They enjoyed right to freedom of voting, joining or forming any party. The right was identical with the right enjoyed by other citizens. The same kind of right is enjoyed by the members in Parliaments in other countries.

43. However, the right was misused and abused. It was used to destabilise and form Governments on principles which were capricious and unethical.

44. Therefore, the present law was framed to contain the menace of defection.

45. It creates obligations and rights for the legislators.

46. It enjoins that the legislator has to vote according to the whip issued to him by his party, has not to leave his party, has not to form any party, has not to join any party. If he violates these obligations, he can be declared as disqualified to be the member of the legislature and lose his membership of the legislature.

47. These obligations are not absolute. They are relaxed by the same law which creates the obligations. The legislator can vote as he likes in violation of the whip issued to him, if one-third members of his party in the legislature wish to vote alongwith him differently from the direction given by the Party. He can separate from his party and form a new party, without incurring any disqualification, in company of one-third members of his Party in legislature, on a split in his party. He can merge with any other party without incurring any disqualification in company of two-thirds members of his party in the legislature. These rights are given to him because they were available to him, before the Tenth Schedule came into existence as such rights are necessary in democratic and parliamentary systems, because such rights are enjoyed by the citizens under PART III of the Constitution of India and also because such rights are available to the legislators in Parliaments and legislatures of other countries.

48. Therefore, the provisions of the Tenth Schedule have to be interpreted very meticulously and strictly.

49. The interpretation can influence very wide and long range of activities and large number of institutions and individuals. The laws creating rights and obligations for citizens and a class of persons and more so for elected representative of the people have also to be interpreted very carefully and strictly.

50. That which is not in the Tenth Schedule cannot be introduced in it.

51. The provisions of the party constitution cannot be read and introduced in the Tenth Schedule.

52. Some provisions of the Tenth Schedule cannot be interpreted to frustrate other provisions of the same.

53. The provisions of the Tenth Schedule have not to be used in colourable manner.

Expulsion :

54. The stand of the petitioners was that the leader of the political party could expel the members of the party from their primary membership and if it was done the members lost their membership of the party in the legislature also.

55. They contend that the expulsion could be effected under the provisions of their Party Constitution.

56. They concede that there was no provision in the Tenth Schedule or any other law or rules under which they could expel the members.

57. They asserted that the expelled members could not form part of group intending to separate from the original party to make it equal to a group having one-third members of the party in the legislature.

58. They held that the Speaker did not have any authority to look into the matter or expulsion. He could not try to ascertain if the procedure provided in the Party Constitution to expel the members was followed or not. And yet he was, according to them, expected to discount the members from the group of members having a right to split from the original Party in one-third number of members of the Party in the legislature.

59. They were of the opinion that if that was not allowed to be done, they would be unable to keep their Party in tact and discipline their members.

60. They thought that there existed a contractual obligation between the Party members and their party as a whole, which could not be adjudicated upon by courts of law or the Speaker, for that matter.

61. They held that the relationship between the members of a Club and the Club was identical with the relationship between the members of a Party and the Party.

62. It is difficult to concede the views expressed by the petitioners on this point in the manner mentioned above.

63. In this respect, explanation (a) to para 2 (1) is relevant :

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

This is a constitutional status given to the member which cannot be taken away from him by expulsion.

64. A member of the legislature comes to the House, not only because he was given the ticket by his party, but because he was elected by the voters also. He is not only obliged to the Party but he is also obliged to the voters.

65. If there is a contract, the contract is not between two parties. It is a tripartite contract. A contract between the member, his party and the voters. His obligation to voters is greater than his obligation to his party.

66. His rights and obligations as a member of his party may arise out of the Constitution of his party. Therefore, for party purposes, he is bound by the party Constitution.

67. His rights and obligations as a member of the legislature emanate from the Constitution of India and other relevant laws and rules. For the purpose of his Parliamentary rights and duties, he is bound by the Constitution of India, the Tenth Schedule and other relevant laws. His party constitution cannot have an upper hand over the Tenth Schedule or other parts of the Constitution of India or other statutes and rules of procedure made by the Legislature.

68. The party constitution cannot add to or reduce from rights and duties given to the members of the Legislature under the Constitution of India and other relevant laws.

69. The Tenth Schedule is framed to curb and control the menace of floor crossing and is relevant to the activities of the member as a Parliamentarian, and to his commissions, omissions, and activities in the Legislature rather than to his activities as a party member outside the Legislature, not connected with Parliamentary activities.

70. The Speaker has no right or duty to help the leaders of the parties to keep their parties in order and discipline their members.

71. A legislator may discharge his duties as a member of his party. He may do his duties as a legislator. The Tenth Schedule applies to his duties and rights as the legislator. It does not apply to his rights and duties as a party member.

72. The party leader may expel a member from his party and may not give

him his party facilities. He may not give him ticket in the next election. He may not give him party positions and posts. He may not give him opportunities to attend the party meetings. He may not be given opportunities to be member of Committees or institutions as a party member.

73. But, the party leader cannot deprive the legislator of rights and facilities which can be available to him because of the fact that he is elected and because of the provisions in the Tenth Schedule, the Constitution of India, other relevant laws and rules.

74. The provision in the party constitution cannot be read as the provisions and part and parcel of the Tenth Schedule and the Constitution of India.

75. The Constitution of India or the Tenth Schedule have not to be interpreted to suit the parties and to fit in their constitutions.

76. The Speaker is not to be bound by the party constitution. He has to function in accordance with the Tenth Schedule, the Constitution of India and other relevant laws and rules.

77. In the Lok Sabha, there are 23 Parties. They have their own constitutions, which are and can be amended in a manner they like. It is not possible to find out if they are amended as per the procedures laid down for the purpose.

78. The Speaker is not expected to follow them, or be bound by them. If that is done, the result would be very confusing.

79. Therefore, it can be held that as there are no provisions in the Tenth Schedule of the Constitution of India or in any other part of the Constitution of India, or in any other relevant laws or Rules of Procedure followed in the Lok Sabha for the purpose of parliamentary functioning and with respect to his rights and duties as a member of the Legislature and not for his party rights and duties and functioning, a member of a party elected to a Legislature by the voters, under the Constitution of India and other relevant laws cannot be expelled.

80. It is not correct and legal to hold that if a member of a party is expelled from its primary membership, he loses his membership of his legislature party.

81. It is not correct and legal to hold that the party leaders can alter the obligations and rights of the Legislators given to them by the law, by expelling them from their primary membership under their party constitution.

82. In the past, members were expelled to achieve different objectives.

83. Members of the Legislature should be allowed to be expelled for the purpose of implementing the Tenth Schedule, only if there are provisions for the purpose in the Tenth Schedule and not otherwise.

84. As there are no provisions in the Tenth Schedule or any other part of the

Constitution, the expulsion of the members for parliamentary purposes is not legal and cannot be allowed.

85. The petitioners realised the legal position correctly and conceded this interpretation of the law.

86. That is why, they have filed petitions against eight members who they claimed were expelled and were not members of their legislature party. By doing so, they have conceded that for parliamentary purposes, the elected members of the Legislature cannot be expelled by the party leaders under their party constitution.

87. Though a little ambiguously, this position is treated as correct by the petitioners in their petitions filed against the allegedly expelled members of their party.

Unattached

88. In the past, in some cases, when the members were expelled, they were called unattached, to distinguish them from the party members as well as from the Independent members.

89. The word unattached is not used anywhere in the Tenth Schedule or any part of the Constitution of India or any other relevant laws or the Rules of Procedure followed in the Parliament.

90. A member belonging to a party has certain rights and obligations under the Tenth Schedule of the Constitution of India.

91. An Independent member also has certain rights and obligations under the same law.

92. But an unattached member does not appear to have any particular status or position.

93. As to what kind of obligations he is subjected to or as to what kind of rights he has is not very clear and is very confusing.

94. Therefore, it is correct to hold the word has no particular legal meaning attached to it and does not create any obligations or rights for the member who is declared as unattached.

When does the decision taken become operative?

95. (i) From the date of the decision taken ?
(ii) From the date of the petition filed ?
(iii) Or from the date on which the violation of whip takes place or the party is split or the other Party is joined by the members ?

96. The general rule is that the laws made are prospective.

97. If they are intended to be retrospective, that has to be made clear in specific terms in the laws themselves.

98. When two interpretations can be put on the laws, one giving them prospective character and the second giving them the retrospective character, the interpretation which gives them prospective character has to be accepted.

99. The retrospective nature of law may hurt innocent persons. Hence, making laws retrospective or interpreting them in such a manner that they become retrospective should be tried to be avoided.

100. The Tenth Schedule of the Constitution of India is prospective and not retrospective in nature.

101. The provisions in the Tenth Schedule are such that they cannot be interpreted to make them retrospective or the decisions given under them retroactive.

102. It provides that the Speaker can declare a member disqualified, if a petition is filed before him for that purpose. He cannot make the declaration without a petition having been filed before him by any member.

103. The leader of the party is expected to give a notice to an erring member and ask him as to why a petition should not be filed against him.

104. If the member gives a satisfactory reply to his leader, he may condone his lapse in which case no petition can be filed against the erring member.

105. If a member is liable to be disqualified and if he joins a group of members who are oblivious of the liability of the member and other members take a step to separate from their original party with a belief that they are a group of requisite number of members and the member under the liability loses his membership later on and if the decision given is made retroactive, injustice would be caused to other members. This kind of situation is expected to be avoided.

106. It is for these reasons, it can justly be held that the Tenth Schedule of the Constitution of India is not of retrospective character and the decisions given under its provisions need not be retroactive or retrospective.

107. In their petitions filed on 11 August 1992 against Shri Ram Sundar Das and three others, the petitioners pray that the respondents be declared as disqualified and that they cease to be members of the Lok Sabha from 17 July 1992, the date on which they violated the whips.

108. The petitioners want the decision to be retroactive.

109. In other petitions also, the prayers are to make the decisions retroactive.

110. All the decisions taken under the Tenth Schedule on the Petitions, shall be operative from the date of the decision and not retrospectively.

Has the Speaker any authority to adjudicate in the matters relating to the party activities and their leaders' decisions outside the Parliament?

111. The Tenth Schedule is meant to curb and control the floor crossing by the legislators.

112. It applies to the parliamentary activities of the legislators.

113. If a legislator violates a whip issued to him, if he leaves his party voluntarily, if he forms a new party or if he joins another party, he is punished under the Tenth Schedule, he is disqualified to be the member of his Legislature.

114. To punish him, the Speaker can go into the details to ascertain if the whip was voluntarily violated, if the member left his Party or joined another Party etc.

115. If a member does not abide by the whip issued to him, in a company of one-third members of his Party in Parliament, or if he leaves the Party in a company of one-third members in his Parliamentary Party or if he joins another Party in a group of two-thirds members of his Party in Parliament, under paragraph 3 or paragraph 4 of the Tenth Schedule, he would not be punished and subjected to disqualification of his membership of the Legislature.

116. The Speaker can decide if the group consisted of one-third or two-thirds members of the Party of the legislator in the Legislature and declare if he is or is not disqualified.

117. He has to decide if the Party had issued the whip, whether it was violated voluntarily.

118. He has to decide if the political party had split outside the Legislature.

119. He cannot decide if the political party claiming to be original party is having majority support or not.

120. That can be done by the Election Commission.

121. It is not necessary for him to count the number of members going with one faction or the other outside the Parliament.

122. It is not necessary for him to find out as to how many members of Parliament were with one faction or the other, outside the Parliament.

123. He can take cognisance of the fact of split in the Party in the Parliament.

124. But that can be done by him, when it is brought to his notice through a Petition by a member in the Parliament.

125. In these matters, he does not act *suo motu*. The leader of the Party is allowed to condone the acts of their party members in the Parliament.

126. The Speaker has to find out if the group separating from the original Parliamentary Party consisted of one-third members of the Party in Parliament or not.

127. He has to find out if the group joining any other Parliamentary Party has two-thirds members of his Party in Parliament or not.

128. It is not necessary for him to find out if the political party splitting outside the Parliament has one-third members of the Party in the Parliament or not.

129. It is difficult for him to find out on what ideological difference the Party is split.

130. The fact of split is more relevant for him to implement the Tenth Schedule.

131. The jurisdiction of the Speaker is more pronounced with respect to the activities of the parliamentarians in the Parliament.

132. It is least effective with respect to the activities of the parliamentarians outside the Parliament.

133. The Tenth Schedule is not meant to control, guide and direct the activities of the political parties and their members and to punish the parliamentarians for their commissions and omissions outside the Parliament.

134. The Speaker is not expected to dabble in keeping the political parties weak or strong or discipline the parliamentarians for their party purposes.

135. In party matters relating to the parliamentarians outside the Parliament, jurisdiction is available to the forums presided over by other authorities and not by the Speaker.

Reasons on which the decisions are based

Document "D1"

136. The application filed by 20 members of the Lok Sabha on 7 August 1992 seeking separate seats for them to sit in the House cannot be treated as application under the Tenth Schedule of the Constitution of India.

137. It can at best be treated as a piece of evidence which could be used in the petitions filed under the Tenth Schedule.

138. The fact of split of political party outside the Parliament and inside the Parliament by requisite number of members cannot be used to obtain a declaration from the Speaker that the party is correctly and legally split.

139. The same fact can be used as a defence in a petition filed against the members splitting the party, to show that the group separating from the party in Parliament consisted of one-third members of the party in Parliament.

140. The application can be considered under Rule 4 of the Rules of Procedure of the Lok Sabha which reads as follows:

"4. The Members shall sit in such order as the Speaker may determine."

141. On the day on which the application was given *i.e.* 7 August 1992, all the signatories to the document were sitting members of the Parliament belonging to the Janata Dal Parliamentary Party.

142. The plea that Shri Ajit Singh and 3 other parliamentarians and also 4 other parliamentarians were expelled from their primary membership of the party by the President of the Party on the dates which preceded the date on which the application was made and hence on that date *i.e.* 7 August 1992, they were not the members of the Janata Dal Party in Parliament and they could not be valid members of the group separating from the Janata Dal Party in Parliament, cannot be accepted.

143. Parliamentarians cannot be legally and validly expelled by their party leaders from their primary membership of the party to annul their membership of the parliamentary party, to defeat the provisions of the Tenth Schedule of the Constitution.

144. There are no provisions in the law which envisage that kind of expulsion of the members of Parliament.

145. Expulsions of the parliamentarians from their primary membership of the party to cancel their membership of the parliamentary party under the party constitution is not valid and acceptable.

146. If that is allowed to be done, the purpose of the provisions in the Tenth Schedule would be frustrated. That would amount to introducing something in the fundamental law of the country from a party constitution which can be changed at any time.

147. For the reasons given in other parts of the decision also, it is held that S/Shri Ajit Singh, Rashid Masood, Harpal Singh Panwar, Satyapal Singh Yadav, Rajnath Sonkar Shastri, Ram Nihor Rai, Ram Awadh and Sheo Sharan Verma were members of Parliament, belonging to the Janata Dal on the relevant date *i.e.* 7 August 1992.

148. On that date *i.e.*7 August 1992, petitions were not filed against them seeking for declaration that they were disqualified and had lost their membership of the Parliament.

149. In the written reply to the application filed by the opposite side, it is stated that Shri Ram Sunder Das and three other parliamentarians had violated the directions given to them to vote in favour of the No-confidence Motion submitted against the Government and that the four parliamentarians had incurred liability of disqualification for being members of the Lok Sabha with effect from 17 July 1992. And so, they could not form part of the group validly to bring the number of members

to the requisite level.

150. On 7 August 1992, there were no petitions filed and pending against them complaining that they violated the whips and seeking a declaration of their disqualification for being the members of the Lok Sabha.

151. On 7 August 1992, they were the validly sitting members of the Lok Sabha belonging to the Janata Dal Party.

152. In other parts of the decision, it is held that the decisions given in these matters cannot be of retroactive or retrospective character.

153. Hence it can be held that they could legally and validly be the members of the group seeking separation from the original party.

154. Against S/Shri Ram Sharan Yadav, Abhay Pratap Singh, Ram Lakhan Singh Yadav, Anadi Charan Das, Roshan Lal, Arjun Singh Yadav, Upendra Nath Verma and Surya Narayan Yadav, petitions were filed seeking their disqualification on 22 August 1992.

155. However, on the relevant date, *i.e.* 7 August 1992, there were no petitions filed against them.

156. On the relevant date, they were the sitting members of the Janata Dal Parliamentary Party.

157. On the relevant date *i.e.* 7 August 1992, all the signatories to the application were sitting members of the Janata Dal in Parliament.

158. Their number was equal to 20 which is more than one-third of 59, which is the number of members of Janata Dal in Lok Sabha on the relevant date.

159. The signatories to the application in a way indicated that there was a split in the Janata Dal outside the Parliament.

160. The application in a way indicated that there was a split in the Parliamentary Party of Janata Dal in Lok Sabha.

161. Although the averments to these effects were made lukewarmly and a little less lucidly, all the other facts and averments made in the subsequent pleadings by both the parties go to point out that there was a split in the Janata Dal outside as well as inside the Parliament, which had taken place before and on the relevant date respectively.

162. Therefore, the application can be and is allowed to grant their prayer that they be allowed to sit separately.

Petitions relating to violation of Whips against Shri Ram Sundar Das and three others

Petition against Shri Ram Sundar Das

163. Most of the averments of the petitioner in the petition are not denied and are accepted by the respondent.

164. Only point on which the Respondent takes a different stand relates to his abstention from voting.

165. The petitioner avers that the respondent voluntarily violated the whip. The respondent asserts that he did not abstain from voting voluntarily.

166. The respondent says that on 17 July 1992, he was unwell, suffering from variable Blood Pressure and in the afternoon was resting in the Library.

167. According to him, when the division bell rang, he tried to rush to reach the Lok Sabha Chamber but because of his weak health and injury to his leg, he could not arrive at the door before it was closed and so he could not enter the House and vote in favour of the No-confidence Motion, although he wanted to do so, very much.

168. The respondent examined himself only to prove his assertions.

169. He did not file any other evidence of any kind on any of the points connected with his stand.

170. The distance between the Library and the Lok Sabha Chamber is easily coverable, even by a slow walker, unless the person covering the distance purposely slows down or neglects to cover the distance by talking to the persons in the Central Hall or *en route*.

171. The respondent could have rested in the Lok Sabha, in the manner he could have rested in the Library, for the Library is not a place meant for resting and with facilities really to rest in a proper manner.

172. The respondent should have understood the contingency in which he finds himself and should have remained in the House to vote on the Motion.

173. The plea taken by him is not convincing and acceptable.

174. It is, therefore, concluded that his act of abstention from voting was not involuntary.

175. The respondent has become liable to disqualification in terms of Para 2 (1) (b) of the Tenth Schedule of the Constitution of India and ceases to be the member of the Lok Sabha from the date of this decision.

Petition against Shri Govind Chandra Munda

176. The only point in dispute in this petition also relates to the abstention from voting by the respondent on the No-confidence Motion against the Government on 17 July 1992.

177. According to the respondent, he wanted to vote on the Motion and was in the Parliament House in the morning of the said date.

178. In the evening, he felt unwell because of the cervical spondylitis and other reasons also and so he went to his house to take medicine and rest.

179. At his house, he took some herbal medicine which made him unconscious. So he could not go to the Parliament and vote on the Motion.

180. He says he had also informed the leader of his party to take him to the Lok Sabha, in ambulance with the consent of the Doctor if it was necessary for him to attend the House. But nothing in that respect was done.

181. The respondent examined himself and other witnesses in support of his stand. They were cross examined by the lawyer of the petitioner.

182. He produced some documentary evidence also to prove his plea.

183. The stand of the respondent is not convincing and acceptable.

184. The evidence given by him is contradictory and not acceptable.

185. The evidence given by his witness is also not convincing and acceptable.

186. There are contradictions between his documentary and the oral evidence.

187. There are contradictions in the evidence given by him and his witnesses.

188. Illness which he suffered from was not such that he could not have gone to the Lok Sabha Chamber to vote.

189. If he had really wanted to vote, he could have organised to be in the Lok Sabha, just at the time of voting and then retired to his house for rest or to the doctor for medical assistance.

190. His plea that he had asked the leader of the Party to take him to the House in a vehicle with the permission of the doctor, if his presence in the House was a must, is not acceptable. He could have gone to the Lok Sabha Chamber on his own, without asking his leaders to take him there. His asking the leader to take him to the House appears to be an attempt to shift the responsibility to someone else for his default.

191. As a responsible member of the House, he could have remained present in the House and voted.

192. The fact that he went to his village in Orissa next day itself goes to show that he was not in a very bad shape on the relevant date.

193. The plea, that he had asked his Party leader to take him to the House, if need be, appears to be a device invented to overcome the difficulties arising out of his absence, in consultation with another member.

194. The demeanour of the witness suggested that they were making artificial statements.

195. In view of the unconvincing pleas adopted, evidence given and arguments advanced, it is difficult to hold that the respondent did not vote involuntarily because of the circumstances beyond his control.

196. It is, therefore, held that he abstained from voting voluntarily and has become liable to be disqualified for being the member of the Lok Sabha with effect from the date of this decision.

Petition against Haji Ghulam Mohd. Khan

197. In this petition also, the point in dispute is identical to that in dispute in other three cases.

198. The respondent pleads that on 17 July 1992 he was not well and was in Ram Manohar Lohia Hospital and suffering from diabetes and other ailments.

199. He says that he had informed the Leader of his Party that if his presence in the House was essential he should be taken there with the consent of the doctor.

200. He states that he intended to vote on the Motion, but he could not do so because of conditions beyond his control.

201. He examined himself and other two witnesses to prove his stand. He and other witnesses were cross-examined by the lawyer of the respondent.

202. He produced some documents to support his plea.

203. He came back to his house on 17 July 1992. This fact contributes towards strengthening the belief that he was not in a very bad shape on 17 July 1992.

204. His stand that the leader of the party should take him to the House, with the consent of the Doctor, is the kind of stand taken by Shri Govind Chandra Munda, a respondent in the other Petition.

205. It is not convincing and acceptable. What he is asking his leader to do, he could have done himself.

206. It appears to be a part of the attempt to shift the responsibility from himself to someone else.

207. As a responsible member of the House, he should have taken care to be present in the House to vote.

208. As he was in New Delhi, it could not have been difficult for him to

attend to duties of voting in the House.

209. The evidence given by him is not convincing.

210. The evidence given by other witnesses also does not evoke great confidence. Their approach appears to be casual and not convincing.

211. There are some contradictions between his oral and documentary evidence.

212. There are some contradictions in the evidence given by him and his witnesses.

213. In view of these facts, the plea adopted by the respondent that his abstention from voting was involuntary cannot be accepted.

214. Therefore, it is held that he has become disqualified to be the member of the Parliament with effect from the date of this decision.

Petition against Shri Ram Badan

215. The respondent pleads that on 17 July 1992, he was in the Lok Sabha and he did press the button to vote in favour of the Motion and that because of the defect in the machine, his vote was not recorded.

216. He says he asked the attendant in the House if his vote was recorded on the Board or not. According to him, the attendant informed him that it was recorded.

217. He says that his eye sight is weak and so he could not see the Board properly to find out if the vote was really recorded or not.

218. His plea is that he intended to vote but by accident he could not vote.

219. He examined himself to support his plea.

220. He did not examine the attendant in the House as his witness to corroborate his evidence on his plea.

221. The plea of the respondent is not convincing and acceptable.

222. The evidence produced by him is not convincing.

223. And so, it is not possible to hold that his abstention from voting was involuntary.

224. It is, therefore, concluded that the respondent has incurred the liability of disqualification for being the member of the Lok Sabha with effect from the date of this decision.

Petition against Shri Ram Sharan Yadav and seven others

Eight Petitions:

225. On 22 August 1992, Shri V.P. Singh filed petitions against S/Shri Ram

Sharan Yadav, Abhay Pratap Singh, Ramlakhan Singh Yadav, Anadi Charan Das, Roshan Lal, Arjun Singh Yadav, Upendra Nath Verma and Surya Narayan Yadav, all members of the Lok Sabha in terms of para 2(1) (a) of the Tenth Schedule of the Constitution of India.

226. The contents of all the petitions are identical. So, they are dealt with jointly.

227. In essence, the petitioner's stand is as follows:

(i) The respondent did not claim that there was a split in the Janata Dal Political Party on or before 7 August 1992 and that he belonged to one of the factions.

(ii) Para 3 (a) (i) of the Tenth Schedule contemplates a split in the political party prior to the split in the party in the Parliament, which is not shown to have taken place.

(iii) Shri Ajit Singh and seven other parliamentarians were expelled from the party's primary membership on three dates which preceded the relevant date, *i.e.* 7 August 1992. So, they had ceased to be members of the Janata Dal in Parliament on the dates of their expulsions.

(iv) Shri Ram Sundar Das and three other parliamentarians had violated the whips issued to them on 17 July 1992. So, they had become liable to be disqualified to be members of the Lok Sabha with effect from the date on which the whips were violated.

(v) Thus, the respondents could not form a group consisting of one-third members of the Janata Dal in the Parliament as the members expelled and the members disqualified could not form part of the group on 7 August 1992.

(vi) For these reasons, the respondents had incurred the liability of disqualification for being the members of the Lok Sabha with effect from 7 August 1992.

(vii) The three groups–one consisting of the expelled members, the second consisting of the members who had lost their membership of the Parliament for having violated the whips and the third consisting of the respondents could not come together to form a group to claim the benefit under para 3(a)(i) of the Tenth Schedule of the Constitution of India.

(viii) According to the petitioner, members who were expelled from the primary membership of their party by the Party President, lost their membership of the parliamentary party from the day of their

expulsion.

(ix) The above position was accepted by the former Speakers who had treated the expelled members as Unattached members.

(x) The President of Janata Dal expelled their party members in the Parliament on different dates, having gaps of many days between the days on which they were expelled for anti-party activities.

(xi) Other members continued to be members of the Janata Dal in the Parliament. In fact, some of them participated in the party elections.

(xii) The respondents contend that no split in Janata Dal Political Party did take place before or after the eight members were expelled by the President of the party.

(xiii) They say that to claim the immunity under para 3(a) (i) of the Tenth Schedule, there should be a split in the political party and there should also be a split afterwards in the Parliamentary Party. Without there being two splits, the members could not enjoy the immunity under para 3(a)(i) of the Tenth Schedule.

(xiv) They contend that Shri Ajit Singh did not claim a split in the political party in the pleadings in the court and also before the Election Commission. His stand was that he was the president of the original Janata Dal.

(xv) The anti-defection law contemplates that there would be a political party and a legislature party.

(xvi) A split in the political party could not be caused by a few members in the Parliament. It has to be caused by a large number of members of the party.

(xvii) Therefore, it could not be held that there was a split in the political party of Janata Dal as required by the Law.

(xviii) The conduct of the respondents in making the application to the Speaker on 7 August 1992 asking for separate seats in the Parliament amounted to giving up the Party as contemplated in para 2(1)(b) of the Tenth Schedule of the Constitution of India.

(xix) The prayer by the petitioner is that the respondents be declared to have become subject to disqualification and to have ceased to be members of the Lok Sabha from 7 August 1992.

228. The respondents filed their written statement on 31 August 1992. In substance it states that–

(i) The points raised by the petitioner were replied to in the pleadings filed by them in other cases.

(ii) The respondents claim that they were the members of the original Janata Dal and that their claim would be proved in other forums.

(iii) They say that on 7 August 1992, the Parliamentary Party had split; and the group which split consisted of members equal to one-third members of the Janata Dal Parliamentary Party.

229. The claims made by the petitioners in this case and petitioners in other cases filed against Shri Ajit Singh and three other Parliamentarians and Shri Rajnath Sonkar Shastri and three others and those made by the respondents in these petitions and the respondents in other petitions are quite confusing and contradictory.

230. In spite of the contradiction in claims made by both sides, there is so much material in their pleadings, evidence and argument to hold that Janata Dal Political Party had split before 7 August 1992. The material is also contained in the submissions made by the Parties in the court of law and also before the Election Commission. Therefore, the respondents can claim the immunity provided in Para 3(a)(i) of the Tenth Schedule.

231. It is already held that the President of the Janata Dal cou'd not expel Shri Ajit Singh and three others from the Parliamentary Party of Janata Dal and could not abridge their rights and duties. They continued to be members of the Parliamentary Party of Janata Dal.

232. It is also held that Shri Ram Sundar Das and three others were valid members of the Parliamentary Party of Janata Dal and the Lok Sabha on 7 August 1992. So, they could form part of the group on that date, separating from Janata Dal Parliamentary Party.

233. There is, therefore, no difficulty in holding that Shri Ajit Singh and seven other parliamentarians, Shri Ram Sundar Das and three other parliamentarians and the respondents could form a group consisting of one-third members of Janata Dal in Parliament and could separate from other members of the Janata Dal Parliamentary Party without becoming liable to be disqualified.

234. The stand of petitioner that the expelled members of the party lost their membership of the Parliamentary Party is not valid, legal and correct. The reasons why it is not correct are given in the previous paras.

235. The reference to the stand taken in the past to the word "Unattached" is also made in the previous paras. What is suggested by the petitioner in that respect is not correct and valid.

236. Therefore, it is not possible to hold that the respondents had become disqualified to be members of the Lok Sabha in terms of para 2(1) (b) of the Tenth Schedule of the Constitution of India.

237. Therefore, the petitions are dismissed.

Petition under Rule 2(1)(a) against Shri Ajit Singh and three others

238. On 3 October 1992, Shri Srikanta Kumar Jena, the Chief Whip of Janata Dal Parliamentary Party, filed a composite petition against S/Shri Ajit Singh, Rasheed Masood, Harpal Singh Panwar and Satyapal Singh Yadav in terms of para 2(1) (a) of the Tenth Schedule of Constitution of India.

239. This petition is not filed by Shri V.P. Singh who was the Leader of the Janata Dal Parliamentary Party.

240. The petitioner repeats that the respondents were expelled from their primary membership of Janata Dal by the President of the Party, that other four members were also expelled for their anti-party activities, and that four other parliamentarians had become disqualified to be members of the Lok Sabha for having violated the whips issued to them.

241. The petitioner states that on 7 August 1992, the respondents and other four expelled members and other four members who had become liable to be disqualified and other eight members made an application to the Speaker seeking separate seats for them in the Lok Sabha.

242. He says that Shri Ajit Singh had in very clear terms claimed that on 5 February 1992, Janata Dal had split and he was endorsed as the President of the original Janata Dal.

243. Para 7 of the petition is very relevant and reads as follows:–

> "7. That expulsion of a member of the Parliament by the Party he belongs to does not result in the forfeiture of his membership of the House, because Para 2(1) (c) of the Tenth Schedule which originally was included in the draft legislation was deleted from the Amendment Bill. Petitioner, therefore, did not file a petition against the respondents herein for seeking their disqualification from the House immediately after the expulsion orders were passed against him".

244. The petitioner says that on 5 February 1992, the only four members formed part of a faction that had arisen as a result of the split.

245. According to him, his act of becoming the President of a faction of the Janata Dal, in the company of only three members of the Janata Dal Parliamentary Party amounted to giving up his Party. As the four members were not equal to one-third members of the Janata Dal in Parliament, they became liable to be

disqualified to be members of the Lok Sabha from 5 February 1992.

246. Para 13 of the petition reads as follows:–

> "13. That the question as to whether the expulsion of the respondents herein was valid or invalid need not, therefore, be pursued in view of the admission of the respondents quoted above as a result of which they have incurred the disqualification".

247. It is prayed that the respondents may be declared as disqualified from being members of the Lok Sabha with effect from 5 February 1992.

248. The stand of the petitioner in this petition is quite contrary to the stand of Shri V.P. Singh in other petitions.

249. The petitioner treats the respondents as members of his Parliamentary Party even on the date of filing his petition *i.e.* 3 October, 1992 and gives up the stand under which his Party used to treat the respondents and four other members of his Parliamentary Party as unattached and not belonging to his Party in the Parliament.

250. The stands contradict each other.

251. The respondents filed their written statement on 4 November 1992.

252. In essence the stand taken by the respondents is as follows:–

The respondents repeat what they had said in other Petitions on the point of expulsion of eight members, disqualification of four members on the ground of violation of the whips and disqualification of eight members on the ground of having given up their party.

253. They state that they are the members of the original Janata Dal and as such all others are the members of the Janata Dal, excepting those who specifically deny to be so.

254. Most other points are denied by them.

255. There is ample evidence in the record to show that there had taken place a split in Janata Dal before 7 August 1992.

256. The Tenth Schedule relates to split in the Parliamentary Party and not the political party outside the Parliament. The law proposes to protect the Parliamentary Party, having elected members and does not protect the political party outside the House. It is meant to curb defection. It is not meant to protect political parties outside the Parliament.

The respondents, therefore, cannot be declared to have become disqualified on the ground of having left their Party in insufficient numbers on 5 February 1992.

257. Therefore, the petition deserves to be and is dismissed.

Petition under Para 2(1)(a) of Tenth Schedule against Shri Rajnath Sonkar Shastri and three others

258. On 3 October 1992, Shri Srikanta Kumar Jena, the Chief Whip of Janata Dal Party in Parliament, filed a composite petition against S/Shri Rajnath Sonkar Shastri, Ram Nihor Rai, Ram Awadh and Sheo Sharan Verma, in terms of para 2(1)(a) of the Tenth Schedule of the Constitution of India.

259. Out of 14 petitions 12 are filed by Shri V.P. Singh, Leader of the Janata Dal in Parliament and 2 are filed by Shri Srikanta Kumar Jena, the Chief Whip of the Janata Dal in Parliament.

260. Shri V.P. Singh, contends in almost all the petitions that Shri Ajit Singh and three others were expelled from the primary membership of the Party and so they had lost their membership of the Janata Dal Parliamentary Party and so, they could not form part of the group separating from Janata Dal headed by Shri Bommai as its President to make up the requisite number so that the separating members do not get disqualified.

261. Shri Srikanta Kumar Jena contends in this petition and in the petition filed against Shri Ajit Singh and three others that Shri Ajit Singh and three others had in clear terms admitted that on 5 February 1992, they had split from the party headed by Shri Bommai and that a new Party was formed by them on 5 February 1992.

262. If the new Party was formed and if Shri Ajit Singh and three others became the members of the new Party, they could not join the group on 7 August 1992 to separate from the Parliamentary Party in requisite numbers.

263. Thus, on 7 August 1992, the other remaining members were only 16 and they could not form a group having the requisite number and hence the respondents in this petition who were the signatories to the application given to the Speaker on 7 August 1992 could become disqualified for having given up their party in insufficient numbers.

264. The stand taken by Shri V.P. Singh is contrary to the stand taken by Shri Srikanta Kumar Jena.

265. The petitioner asks that the respondent should take a fixed stand and they should not approbate and reprobate. However, the petitioners themselves appear to be approbating and reprobating.

266. The faction of Janata Dal headed by Shri S.R. Bommai, appears to have given up the stand that the members of Parliament can be expelled from the Parliamentary Party.

267. The respondents filed their written statement on 4 November 1992.

268. Through the written statement they say that Shri Ajit Singh and seven others could not be legally expelled from the Janata Dal Parliamentary Party, that Shri Ram Sundar Das and three others could not be disqualified on the ground that they had violated the whips issued to them.

269. They say that Shri Ajit Singh and three others belonged to the original Janata Dal and as such all other members of Janata Dal Parliamentary Party belonged to their faction, unless any of them declared specially otherwise.

270. It is already held that the President of the Janata Dal could not expel Shri Ajit Singh and three others from the Parliamentary Party of Janata Dal and could not abridge their rights and duties. They continued to be members of the Parliamentary Party of Janata Dal.

271. It is also held that Shri Ram Sundar Das and three others were valid members of the Parliamentary Party of Janata Dal and the Lok Sabha on 7 August 1992. So, they could form part of the group on that date, separating from Janata Dal Parliamentary Party.

272. There is, therefore, no difficulty in holding that Shri Rajnath Sonkar Shastri and three other parliamentarians and the sixteen other respondents could form a group consisting of one-third members of the Janata Dal in Parliament and could separate from other members of the Janata Dal Parliamentary Party without becoming liable to be disqualified.

273. The stand of the petitioner that the expelled members of the party lost their membership of the parliamentary party is not valid, legal and correct. The reasons why it is not correct are given in the previous paras.

274. Therefore, it is not possible to hold that the respondents had become disqualified to be members of the Lok Sabha in terms of para 2(1)(a) of the Tenth Schedule of the Constitution of India.

275. Therefore, when the said application was given to the Speaker, the members signing it, were in requisite numbers and so the respondents in the present petition cannot be held to have become subject to disqualification on the ground of having separated from their party in insufficient numbers.

276. Therefore, it is held that the petition deserves to be and is dismissed.

Some thoughts on the Case and the Law

How important, how complicated and how agonising are the matters in this case? – moral, legal, political aspects of it.

277. This matter is important and complicated. It has been a little agonising also.

278. It is important because it has implications for the democracy and parliamentary system in India.

279. It is complicated because it involves interpretation of the Tenth Schedule of the Constitution of India and the freedoms, rights and obligations enjoyed by, the Indian citizens and their representatives in the Parliament.

280. The Tenth Schedule is a new law. There are not many precedents available on the basis of which it can be interpreted and enforced. It is not happily worded nor free from lacunae.

281. The totality of the matter consists of one application and fourteen petitions. Some pleadings in the petitions and applications have been contradictory and casual too.

282. The parties to the matter are not expected to be clear on the law points involved in it. Their approach has been political rather than legal.

283. It has been agonising because, at times, words were used by the parties which could hurt. However, it has been ultimately dealt with in a responsible manner by all concerned. The lawyers appearing in the case have been able to shed light and bring restraint and logic to bear on the proceedings.

284. The matter has moral, legal and political ingredients, according to some.

285. It is not easy to pass judgments in matters moral. Those who have to deal with matters on the basis of law have restricted scope to apply the principles of morality while deciding the issues. There may occur contradictions between the stands, moral and legal, taken by the parties. In such cases, as per the rule of law, the legal stand gets the upper hand. Those who have to decide have to do their best to keep the principles of morality in their minds while giving judgments on the basis of law.

286. The matters of this nature have to be decided on the basis of law. The present matter is tried to be decided on the basis of law. It is easier to judge on the basis of law. But it can become difficult too, if the law is not clear or correct interpretation is not put on it.

287. Matters and ingredients, political, are often both not straight forward and are difficult. They can solve, create and complicate issues and problems. They can prove laudatory or abusive, soothing or agonising.

288. In such cases, the chances of political ingredients manifesting agonising characteristics may or may not be limited. One can only and sincerely hope that their play may be limited and dignified.

289. The present case involves the membership of 20 parliamentarians who are the representatives of more than two crores of Indian citizens. They are elected by the people. In a democracy, the verdict of the people has its own value.

290. Yet, the representatives of the people are expected to come upto the expectations of the laws. The menace of floor crossing is not easy to handle. If it remains uncontrolled, it can destroy the parliamentary and democratic systems.

291. Therefore, actions are not taken in an ebullient and impulsive manner. But actions are taken to do justice. Those who are found to go against the law are subjected to punishment.

292. To judge is not easy.

293. To do justice, according to one's own light, is the only way available to one who has to decide and judge. That is tried to be done in this case.

Some Suggestions of the Law

The Tenth Schedule:

294. The Tenth Schedule of the Constitution of India has served to a great extent the purpose for which it has been brought into existence. It has some weak points and defects too. They are now thrown up and have become quite visible. They should not be allowed to continue in the body of the law.

Definitions:

295. It uses some words and phrases which are not defined. They should be properly defined to make the concepts contained in them more lucid and clear.

Situation envisaged:

296. The law does not provide for coping with the situations that arise in dealing with matters relating to defections. It should be made more comprehensive and should provide for possible situations which can crop up in interpreting and enforcing the law.

Party activities outside the Legislature:

297. The law deals with defections in the Legislature. The defections in the Legislature are connected with the activities of political parties. The activities of the members of the parliamentary party are governed by the Tenth Schedule, other provisions of the Constitution, other relevant laws and the Rules of Procedure followed by the Legislature.

298. The activities of the political parties outside the Legislature are not

conducted according to the legal provisions for there are no laws available for the purpose. It is not easy or desirable to put them under rigid laws. The political parties should have freedom to conduct their activities as they like. But to control defections in the Legislature, at times, it becomes necessary to have the activities of the political parties conducted in a predictable manner.

299. As to how it can be done should be examined. The Tenth Schedule can be made more comprehensive to cover some of the activities of the political parties to make it more effective. Or some other legislation can be agreed upon and passed by all concerned to make the political party's activities, more predictable.

Who should decide?

300. At present, the Speakers and Chairmen decide the anti-defection law cases.

301. Originally, their decisions were supposed to be final. Now, they are subject to the review by the judiciary. The provision in the law making the decisions final and non-reviewable by the judiciary has been struck down on the ground that it was not ratified by the requisite number of State Legislatures as it involved the ouster of the jurisdiction of the judiciary.

302. If it is decided to give finality to the decision given by the Speaker or the Chairman, the provision which was struck down, can be restored by taking recourse to a procedure necessary in this respect.

303. Even then, the Judiciary may claim inherent jurisdiction to review the decisions.

304. But, the inherent jurisdiction in the light of the provision in the law giving finality to the decision of the Speaker, or the Chairman may be used in very rare and exceptional cases, which is different from allowing review in a frequent and regular manner.

305. Or we can amend the law and provide that the anti-defection law cases can be decided by a Supreme Court Judge or two Judges, if the cases related to the Parliament and by a High Court Judge or two Judges if the cases related to the State Legislatures.

306. The advantage in giving these cases to the Judiciary to decide are many.

307. The Judges are better equipped to decide legal matters. Anti-defection law cases have to be decided strictly according to the law. The Speaker or the Chairman may or may not be endowed with legal acumen and proficiency in law. He is certainly not going to be equal in this respect to the Judge of the Supreme Court or a High Court, whose main task is to hear legal matters and to decide them

as per the law.

308. When the anti-defection law cases are heard by the Speaker or the Chairman, the parties to the dispute appear before them and conduct the cases. They may or may not be fully acquainted with the procedures and principles of interpretation of facts and law. So, they can be of limited help in deciding these kinds of matters.

309. In a court of law, lawyers can plead and conduct the cases, which is bound to be held in disposing of the cases, in a better manner. The lawyers do appear before the Speaker or the Chairman as is done in the present case. But, allowing them to appear before the Speaker or the Chairman is different from allowing them to appear before a Judge of the Supreme Court or a Judge of the High Court.

310. When the matters are conducted in front of the Speaker or the Chairman, the pleadings made, arguments advanced tend to be political rather than legal.

311. The Tenth Schedule is a part of the Constitution of India. The responsibility to interpret the Constitution of India is that of the Supreme Court or the High Courts. It is, therefore, more apt to have the cases involving the interpretation of the Tenth Schedule decided by the Supreme Court or High Court Judges.

312. The Presiding Officers in the Legislatures in our country have considered this matter. They have their own views. They can again consider these matters and come to a final conclusion.

313. This aspect has been discussed in many other forums also. It should now be finally considered and decided as expeditiously as is possible.

The Whip:

314. All citizens of India can vote as they like. But, the elected representatives of the people have to vote as per the directions given to them by their party leaders.

315. This provision was introduced to control floor crossing. It may be necessary to have it in the law of anti-defection.

316. But is it necessary to ask the representatives of the people to vote in a particular manner in all cases?

317. When a Motion of No-confidence against the Government is discussed or when matters mentioned in the manifesto are discussed, or some other very important matters are discussed, the members of the political parties may be asked

to take a particular stand and directed to vote in a particular manner.

318. A list of matters in which voting can be directed to be done in a particular manner can be made a part of the law and can be followed by the Parties and their members. On subjects mentioned in such matters, voting can be directed to be done in a particular manner.

319. In all other matters, it need not be directed to be done in a particular manner.

320. If provisions of this nature are introduced in the Tenth Schedule, the anti-defection law would achieve the purpose for which it is made and make the principles mentioned in the Chapter of Fundamental Rights and the principles followed in parliamentary and democratic systems in other countries more easily available to the members of the Legislature.

Other Provisions in the Law:

321. There are some other provisions in the law which have been criticised and not liked by those who function in the Legislatures and the people also.

322. There are some provisions which need refining and fine tuning.

323. The law can be made more stringent and more effective by having some salutary provisions introduced in it.

Committee for the Purpose:

324. A Committee to look into the matters relating to the Tenth Schedule for above mentioned purposes and for other purposes also can and should be constituted in consultation with the representatives of the executive at the Centre. The Executive at the State level, the representatives of the Presiding Officers of the Legislatures and legislators, the jurists and the officers well versed in the matters-parliamentary and legislative-can be asked to give a comprehensive report for overcoming the difficulties and defects of the law within a short period. Then the report can be acted upon expeditiously.

Can We Have Some Other Device?

325. Can we have some other device for these purposes?

326. Can we introduce provisions in the Constitution which can obviate the need to have a law of the nature we have now?

327. Indications are that, that is possible and can be done.

328. How exactly can it be done, can not and need not be dealt with in detail at this place. What is to be perceived and remembered is that what is suggested is in the realm of possibility and should be examined and if found feasible, should be

acted upon.

Order

1. It is held that the 20 members of the Parliament who are signatories to the Application marked as 'D1' were the members of the Parliament on 7 August 1992.

2. The request made by them in the Application is allowable and is allowed with respect to the sitting members at this point of time.

3. Under the Tenth Schedule of the Constitution of India and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985, it is decided–

(i) that S/Shri Ram Sundar Das, Govinda Chandra Munda, Haji Ghulam Mohd. Khan and Ram Badan have incurred disqualification for being members of the Lok Sabha and have ceased to be the members of the Lok Sabha with effect from the date of this order;

(ii) that the petitions filed by Shri V.P. Singh against S/Shri Anadi Charan Das, Surya Narayan Yadav, Ram Lakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Arjun Singh Yadav, Abhay Pratap Singh and Upendra Nath Verma, MPs are dismissed;

(iii) that the petition filed by Shri Srikanta Kumar Jena against S/Shri Ajit Singh, Rasheed Masood, Harpal Singh Panwar and Satyapal Singh Yadav, MPs is dismissed;

(iv) that the Petition filed by Shri Srikanta Kumar Jena against S/Shri Rajnath Sonkar Shastri, Ram Nihor Rai, Ram Awadh and Sheo Sharan Verma is dismissed;

on the ground that when they separated on 7 August 1992, they were sitting members of the Lok Sabha and were equal to one-third members of Janata Dal Legislature Party.

4. Copies of this order be forwarded to the Petitioners, the persons/ members in relation to whom the Petitions are made and to the Leader of the Janata Dal Legislature Party in Lok Sabha.

(5) Decision of Shri Shivraj V. Patil, Speaker, Tenth Lok Sabha under the Tenth Schedule to the Constitution (In Janata Dal (A) Case, 1993 – 96)*

The decision of the Hon'ble Speaker, Lok Sabha dated 3 January 1996 under the Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 is given as under:–

"Before Honourable Speaker, Lok Sabha"

Shri Ajit Singh _____ Petitioner

Versus

1. Shri Ram Lakhan Singh Yadav
2. Shri Ram Sharan Yadav
3. Shri Abhay Pratap Singh
4. Shri Roshan Lal
5. Haji Ghulam Mohd. Khan
6. Shri Anadi Charan Das
7. Shri Govinda Chandra Munda — Respondents

Petition under para 2(1) (b) or in the alternative under para No. 2 (1) (a) of the Tenth Schedule of the Constitution of India for a decision that the aforesaid respondents are disqualified for being members of the House of the People (Lok Sabha) on the ground that they had violated the whip duly served on them directing them to vote in favour of the No-confidence Motion on 28 July 1993 or in the alternative on the ground that they voluntarily gave up the membership of the Janata Dal (A) of which they were the members.

1. On 1 June 1993 it was decided in the Janata Dal case, that Janata Dal (A) consisting of 20 members with Shri Ajit Singh as its leader came into existence. Subsequently on 28 July 1993 (At 16.15 Hrs.) Shri Ram Lakhan Singh Yadav handed over a letter of the same date signed by him and 6 other members belonging to Janata Dal (A) *viz.* Sarvashri Roshan Lal, Abhay Pratap Singh, Govinda Chandra Munda, Ram Sharan Yadav, Anadi Charan Das and Haji Ghulam Mohd. Khan requesting for a separate group in Lok Sabha.
2. On that day *i.e.* 28 July 1993, at the voting on a motion on No-confidence in the Council of Ministers (held at 20.20 Hrs.), Shri Ram

**See* Gazette of India Extraordinary Part (II) dt. 24 January 1996 Lok Sabha Bulletin. (II) dt. 22 January 1996, para No. 4497.

Lakhan Singh Yadav and the said six other members voted against the motion. On 3 August 1993, a letter dated 2 August 1993 was received from the Minister of Parliamentary Affairs informing that Shri Ram Lakhan Singh Yadav and six others who had made a request to be seated separately in Lok Sabha had been admitted to Congress (I) and that they be allotted seats in Congress (I) block of seats. Comments in this respect were obtained from Shri Ajit Singh. After considering the comments of Shri Ajit Singh and further submissions by Shri Ram Lakhan Singh Yadav and others, it was decided to seat the said 7 members separately outside the Janata Dal (A) Block of seats in Lok Sabha for the purpose of functioning in the House.

3. It may be pertinent to mention that there were allegations by Shri Ajit Singh and some other members that Shri Govinda Chandra Munda, one of the signatories to the above letter dated 28 July 1993, was pressurised by a Minister and some members to correct his vote to 'NO' in favour of the Government at the time of voting on the No- confidence Motion held on 28 July 1993. Comments in this respect were obtained from the Minister and the members concerned who had denied the respective allegations made against them in the matter. Shri Munda in his letter dated 29 July 1993 intimated that he had voted against the motion of his free will. Besides, at the time of recording a statement in the matter, when Shri Munda was asked specifically if any member or members of Council of Ministers had brought any kind of pressure on him in the matter of vote cast by him, he emphatically denied the same.

4. On 12 August 1993, Shri Rajnath Sonkar Shastri, M.P., the then Chief Whip of Janata Dal (A) Legislature Party in Lok Sabha intimated in writing that Shri Ram Lakhan Singh Yadav and five other Members (excluding Shri G.C. Munda) had voted contrary to the party directive without prior permission, at the time of voting on the No-confidence Motion held on 28 July 1993 and that the party had decided not to condone the violation of the party directed by the said six members.

5. On 26 August 1993, Shri Ajit singh filed a composite petition under the Tenth Schedule to the Constitution and the rules made thereunder against the said seven Members *viz.* Sarvashri Ram Lakhan Singh Yadav, Ram Sharan Yadav, Abhay Pratap Singh, Roshan Lal,

Haji Ghulam Mohd. Khan, Anadi Charan Das and Govind Chandra Munda.

6. The petitioner contended that 6 out of the 7 respondents *viz.* Sarvashri Ram Lakhan Singh Yadav, Ram Sharan Yadav, Abhay Pratap Singh, Roshan Lal, Haji Ghulam Mohd. Khan, and Anadi Charan Das, at the time of voting on the Motion of No-confidence held on 28 July 1993 voted contrary to the party directives and hence had become subject to disqualification under para 2(1) (b) of the Tenth Schedule.

7. In his alternative plea, the petitioner submitted that since the letter written by the respondents on 28 July 1993 requesting for a separate group amounted to giving up the membership of the original political party, the seven respondents (including Shri G.C. Munda) had become liable to be declared disqualified under para 2(1) (a) of the Tenth Schedule.

8. Copies of the petition were forwarded to the respondents for their comments as required under the Anti-defection Rules. The main stand of the respondents in their written statements in this respect was that since they and already decided to split from Janata Dal (A) and a valid split had taken place and the faction, which arose pursuant thereto, was more than one-third of the total members of the Janata Dal (A) in the Lok Sabha, there was no occasion for them to take notice of the whip issued to them by Janata Dal (A) and they were neither required nor obligated to obey the whip.

9. After considering the comments of the 7 respondents, it was decided to hold hearings in the matter. The parties to the case were allowed to plead their case themselves as well as through their counsels. The first hearing in the case was held on 17 December 1993 which was attended by the petitioner, respondents and their Counsels. However, during the subsequent hearings held on 11 April, 6 June and 24 August 1994, neither the petitioner nor his Counsel was present.

10. Mention may be made here of some subsequent developments which took place while the hearings in the case were in progress. On 30 December 1993, Shri Ajit Singh and 9 other members of Janata Dal (A) informed that they had decided to merge with Congress (I), after examining the matter, seats were allotted to Shri Ajit Singh and others in Congress (I) block of seats in Lok Sabha and they were treated as members of Congress (I).

11. In another development, Shri Upendra Nath Verma, MP, belonging to Janata Dal (A) filed (i) an application to substitute his name as petitioner in the petition against Shri Ram Lakhan Singh Yadav and others in place of Shri Ajit Singh; (ii) composite petition for disqualification against Shri Ajit Singh and 9 other members who had merged with Congress (I).

12. Hence, during the fourth and final hearing held on 24 August 1994 (which was also not attended either by the petitioner or by his Counsel) apart from the main issues, another additional issue emerged for consideration *viz.* is it permissible for a third party to intervene in the proceedings before the Speaker in respect of a petition for disqualification under the Tenth Schedule. Shri Kapil Sibal, Counsel for the respondents in his oral arguments (on 24 August 1994) and written submissions (received on 16 September 1994), on the issue of intervention by a third party, submitted that once the proceedings under the Tenth Schedule in respect of a petition for disqualification are set in motion, there is no occasion for any intervention by a third party.

13. As regards the main issues in the case, Shri Sibal had submitted that since a valid split had taken place in the Janata Dal (A) Legislature Party in the Lok Sabha and the 7 respondents comprising the faction which arose pursuant thereto, constitute more than one-third of the total strength of the Janata Dal (A) in Lok Sabha, they are not subject to the rigours of para 2 of the Tenth Schedule, being within the exception set out in para 3 of the said Schedule.

14. On 29 November 1995, the petitioner (Shri Ajit Singh), the respondents (Shri Ram Lakhan Singh Yadav and others) and Shri Upendra Nath Verma, M.P. were called to discuss the matters involved in the case. During the meeting, the Petitioner submitted a written statement stating that he did not wish to pursue the case. Shri Upendra Nath Verma also filed a written statement stating that he does not wish to press his (i) application for substitution of his name as petitioner in this case and (ii) composite petition for disqualification against Shri Ajit Singh and 9 other members. The said written statements by Shri Ajit Singh and Shri Upendra Nath Verma were countersigned by me.

15. The main issue for consideration in the case in respect of composite petition by Shri Ajit Singh against Shri Ram Lakhan Singh Yadav and other members is whether:–

(i) Shri Ram Lakhan Singh Yadav and 5 other respondents (excluding Shri G.C. Munda) have incurred disqualification under para 2(1) (b) of the Tenth Schedule for voting in the House contrary to the party directive (as prayed by the petitioner in his main plea); or

(ii) All the 7 respondents by making a request for separate group have incurred disqualification under para 2(1) (a) of the Tenth Schedule for voluntarily giving up membership of their original political party (as prayed by petitioner in his alternative plea).

16. The evidence that has come on record shows that the respondents had split from the original party.

17. The petitioner had stated in writing that he is not interested in pursuing the petition. Hence, it is held that the membership of the respondents cannot be terminated.

18. In view of the findings that the respondents had split from the original party, it is not necessary to decide if Shri G. C. Munda had validly received the directions from the whip of the original party and if he had violated the whip. In view of this position, the membership of Shri G.C. Munda cannot be terminated.

19. Shri Upendra Nath Verma wanted to be impleaded in the matter as the petitioner.

20. He did not appear before the deciding authority, at the time when the evidence was recorded or when the arguments were heard. He has given in writing that he is not interested in getting himself impleaded as the petitioner. On behalf of the respondents, it was pleaded that legally also, Shri Verma could not be impleaded as petitioner.

21. In view of the application given by Shri Upendra Nath Verma saying that he is not interested in pressing for getting himself impleaded as the petitioner, it is not necessary to decide whether he can be impleaded as the petitioner, legally.

22. The matter of Shri Upendra Nath Verma's becoming the petitioner does not survive after his giving in writing that he is not interested in becoming the petitioner.

Order

23. Therefore, the petition is disposed of as follows:–

(i) The Petition is dismissed;

(ii) The respondents are not subject to disqualification;

(iii) Membership of Shri G. C. Munda is not terminated;

(iv) The application of Shri Upendra Nath Verma is disposed of in terms of his second application which states that he is not interested in getting himself impleaded as the petitioner.

(v) The case is closed;

(vi) Other necessary steps may be taken in terms of law and the rules.

(6) Decision of Shri G.M.C. Balayogi , Speaker, Thirteenth Lok Sabha under Tenth Schedule to the Constitution (In RJD case 2001-2002)*

The decision of the Hon'ble Speaker, Lok Sabha dated 6 January 2002 under the Tenth Schedule to the Constitution and the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 is given as under:–

In the matter of petition filed by Dr. Raghuvansh Prasad Singh, MP and Leader of Rashtriya Janata Dal in Lok Sabha against Shri Sukdeo Paswan and Mohammad Anwarul Haque, MPs under Rule 6 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985

At the time of constitution of the Thirteenth Lok Sabha, the Rashtriya Janata Dal Legislature Party had a strength of seven members with Dr. Raghuvansh Prasad Singh as its leader.

2. On 28 April 2001, Mohammad Anwarul Haque and Sarvashri Sukdeo Paswan and Nagmani, members belonging to Rashtriya Janata Dal (hereinafter referred to as RJD) *vide* their joint letter dated 28 April 2001, intimated me about split in RJD and formation of RJD (Democratic) party in Lok Sabha comprising of the said three members. On the same day a letter dated 28 April 2001 was also received from Shri Laloo Prasad Yadav, President, RJD intimating me about expulsion of Shri Nagmani, MP from RJD.

3. I caused forwarding of copies of both the letters to Dr. Raghuvansh Prasad Singh, MP and leader of RJD in the Lok Sabha on 2 May 2001 for his comments in the matter.

4. Dr. Raghuvansh Prasad Singh *vide* his letter dated 12 July 2001 made the following submissions:–

(i) RJD had expelled Shri Nagmani from the primary membership of the party on 28 April 2001 and intimated about the same to the Speaker on the same day. It was only thereafter that day that Shri Nagmani alongwith other two members addressed a communication to the Speaker intimating about their decision to split-away from RJD.
It, therefore, became imperative to take note of the time of receipt of both the communications.

(ii) An expelled member becomes unattached. Hence a claim by such a

*See Gazette of India, Extraordinary Part (II) dt. 28 February 2002 and Lok Sabha Bulletin (II) dt 28 February 2002, Para No. 2697.

member of formation of a group was not legitimate.

(iii) Consequently the claim for split by Shri Nagmani, who had since been expelled, alongwith two other members (Mohd. Anwarul Haque and Sukdeo Paswan) was not a valid claim for split in terms of para 3 of the Tenth Schedule.

(iv) No political group by the name of RJD (Democratic) had been formed outside the House. No group by that name had even been formed inside Bihar Vidhan Sabha. Besides, they had not given any intimation regarding the policies, constitution, rules/regulations etc. of their group.

(v) Moreover parleys were on by these members with NDA with a view to joining them, which itself was a form of defection.

5. On 6 August 2001, a personal hearing was given by me to Dr. Raghuvansh Prasad Singh at his request.

6. During the hearing, while reaffirming the submissions made by him in his letter dated 12 July 2001, Dr. Raghuvansh Prasad Singh also contended that Mohammad Anwarul Haque and Sukdeo Paswan had merged with another party. Since it was an entirely new contention, he was requested to furnish the requisite information in writing.

7. On 7 August 2001 Dr. Raghuvansh Prasad Singh filed a petition against Mohammad Anwarul Haque and Sukdeo Paswan, MPs under Rule 6 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 (hereinafter referred to as Anti-defection Rules).

Dr. Raghuvansh Prasad Singh (hereinafter referred to as petitioner) made the following submissions in his petition:-

"(1) Mohammad Anwarul Haque and Shri Sukdeo Paswan (hereinafter referred to as respondents) had left RJD and joined Bharatiya Loktantrik Party while a decision was yet to be taken on their claim for split (made alongwith Shri Nagmani).

(2) From the action and conduct of the respondents, it was clear that they merged with Bharatiya Loktantrik Party. Since the respondents do not constitute two-thirds of the strength of RJD, they do not enjoy the protection under para 4 of the Tenth Schedule.

(3) Petitioner prayed for disqualification of the respondents under para 2(1) (a) of the Tenth Schedule to the Constitution for having voluntarily given up the membership of RJD".

8. Subsequently, the petitioner *vide* his letter dated 13 August 2001 had

requested that the submissions made by him in his petition might also be taken note of in the case of split in RJD.

9. After having satisfied myself in terms of rule 7(1) of the Anti-defection Rules that the petition complied with the requirements of Rule 6, I caused copies of the petition to be forwarded to the respondents in terms of Rule 7(3) (a) of the Anti-defection Rules for furnishing their comments.

10. The respondents in their comments furnished *vide* their two identical letters dated 27 August 2001 denied either joining or forming any new political party by the name of Bharatiya Loktantrik Party. They stated that there was a vertical split in RJD on 28 April 2001 and consequently they together with Shri Nagmani formed a separate political party *viz.* Rashtriya Janata Dal (Democratic). They constituted more than one-third of the strength of RJD in Lok Sabha.

11. The *issues* for consideration in this case are whether:–

(i) The fact of expulsion of Shri Nagmani from RJD, stated to have taken place before split in the party, has relevance in this case.

(ii) The claim made by the respondents and Shri Nagmani of a split in RJD is valid in terms of Para 3 of the Tenth Schedule.

(iii) The respondents had merged with Bharatiya Loktantrik Party.

12. For arriving at a decision on the above issues, I took note of the following facts:–

(a) The claimed split in RJD took place in April, 2001. The three members who claimed the split do constitute one-third of the existing strength of RJD in the Lok Sabha.

(b) The decision on the claim of split in RJD has, however, been pending for want of comments from the petitioner which were called for from him in his capacity as the leader of RJD legislature party in the Lok Sabha.

(c) Had the comments of the petitioner been furnished earlier, the same would have facilitated taking decision on the claim for split in RJD well before filing of the petition.

(d) Furthermore, the request by the petitioner for expressing his views on claim for split to me in person, further delayed the decision in the case.

Issue numbers (i) & (ii) (*vide* para 11)

13. Tenth Schedule to the Constitution does not contain provisions to cope with situations arising out of expulsion of members from primary membership of

their political parties. Consequent upon the decision of the Speaker, Tenth Lok Sabha in the Janata Dal case, dated 1 June 1993, the practice in Lok Sabha has been to seat the expelled members separately without any change in their party affiliation, in party position etc., in the Lok Sabha.

Hence an expulsion of a member from the primary membership of his political party does not affect his party affiliation in the Lok Sabha.

14. In view of the foregoing, despite expulsion of Shri Nagmani from the membership of RJD political party, there would not be any consequential change in the strength of RJD Legislature Party in the Lok Sabha. Consequently, the issue whether intimation of expulsion of Shri Nagmani from RJD was received earlier than claim of split in RJD by Shri Nagmani & others or subsequently, had no relevance.

The issue number (i) is, therefore answered in negative.

15. In terms of paragraph 3 of the Tenth Schedule to the Constitution, the provisions regarding disqualification on ground of defection do not apply where members make a claim that they constitute a group representing a faction which has arisen as a result of split in their original political party and such group consists of not less than one-third of the members of such Legislature Party.

The said three members do constitute one-third of the existing strength of RJD, in the Lok Sabha, which is seven.

16. The only point which is relevant is that at the time of claim for split in RJD, the three members who made the claim did constitute one-third of the strength of RJD in the Lok Sabha.

17. I accordingly on 30 August 2001, decided to – (i) treat Sarvashri Mohammad Anwarul Haque, Sukdeo Paswan and Nagmani, as belonging to RJD (Democratic) in the Lok Sabha, for functional purposes, and (ii) seat them separately in the House.

The members were intimated in writing about my decision and necessary changes were made in party position in the Lok Sabha.

The issue number (ii) is, therefore, answered in affirmative.

Issue number (iii) (*vide* Para 11)

18. The two respondents in their comments (at Para 10 supra) stated that they had neither formed any political party by the name of Bharatiya Loktantrik Party nor joined any such Party. Besides no claim has been made by any member regarding formation of any party by the name Bharatiya Loktantrik Party in the Lok Sabha.

Hence the contention made by the petitioner that the respondents had merged

with 'Bharatiya Loktantrik Party' has no merit.

In view of the above discussion, issue number (iii) is answered in negative.

Order

19. "In exercise of the powers conferred upon me under paragraph 6 of the Tenth Schedule to the Constitution, I, G.M.C. Balayogi, Speaker, Lok Sabha, hereby decide that the petition dated 7 August, 2001 given by Dr. Raghuvansh Prasad Singh, MP against Mohammad Anwarul Haque and Shri Sukdeo Paswan, MPs has no merit and Mohammad Anwarul Haque and Shri Sukdeo Paswan have not incurred any disqualification in terms of Paragraph 2 (1) (a) of the Tenth Schedule to the Constitution.

I accordingly dismiss the petition.

(II) Decisions of Chairmen, Rajya Sabha

(1) Decision of Dr. Shanker Dayal Sharma, Chairman, Rajya Sabha, under Paragraph 6(1) of the Tenth Schedule to the Constitution of India (Mufti Mohammed Sayeed Case, Rajya Sabha, 1989)*

The Chairman, Rajya Sabha, announced the following decision at the sitting of the Rajya Sabha held on 28 July 1989, on the petition of Shri V. Narayanasamy, member, Rajya Sabha, in relation to Mufti Mohammed Sayeed, member, Rajya Sabha, under paragraph 6(1) of the Tenth Schedule to the Constitution of India :–

"Mufti Mohammed Sayeed, an elected member of the Rajya Sabha from the State of Jammu and Kashmir, addressed me a letter dated 10 March 1989, which reads as follows:

> "As you are aware, I was elected to the Rajya Sabha as a candidate of the Indian National Congress (I) from the State of Jammu and Kashmir in 1986.
>
> However, I have severed my political link and affiliation with that party for the last several months, and I have become a member of the Janata Dal. I am also a member of the Parliamentary Board of the Janata Dal and have been functioning outside Parliament as an active member of that party.
>
> I am hereby officially conveying this information to you to enable you to take such action as you may deem fit in the matter."

The said letter was referred by me to the Leader of the Congress (I) Legislature Party for information on 28 March 1989.

Shri V. Narayanasamy, member, Rajya Sabha, filed before me a petition on 28 April 1989, under paragraph 6 of the Tenth Schedule to the Constitution and Rule 6 of the Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985, praying that the Chairman, Rajya Sabha, be pleased to hold that Mufti Mohammed Sayeed, member, Rajya Sabha, stands disqualified under the Tenth Schedule to the Constitution of India and also declare his seat in the Rajya Sabha vacant.

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*See Gazette of India, Extraordinary Part (II) dt. 28 July 1989 and Rajya Sabha Bulletin (II) dt. 28 July1989 Para No 31300.

I forwarded copies of the petition and the annexure there to Mufti Mohammed Sayeed and the Leader of Congress (I) Party in Parliament, under Rule 7(3) of the said Rules, on 2 May 1989, requesting them to forward their comments on the petition to me within seven days from the receipt of the same.

I received a letter dated 6 May 1989, from Mufti Mohammed Sayeed by way of his comments informing me that he had nothing to add to what he had already written to me in his letter dated 10 March 1989.

Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs, who had been authorised by the Leader of the Congress (I) Legislature Party for communicating with the Chairman for purposes of these rules, in his comments dated 9 May 1989, stated that he entirely agreed with the petition of Shri V. Narayanasamy. He further stated that Mufti Mohammed Sayeed had himself admitted that he had left the Congress (I) Party which set him up as a candidate for election to the Rajya Sabha and that this admission of Mufti Mohammed Sayeed itself was conclusive proof of his incurring disqualification as a member of the Rajya Sabha on ground of defection.

After considering the comments of Mufti Mohammed Sayeed and Shri M.M. Jacob, Minister of State in the Ministry of Parliamentary Affairs, in relation to the petition, I was satisfied, having regard to the nature and circumstances of the case that it was necessary to refer the petition to the Committee of Privileges of Rajya Sabha and I referred the petition to the Committee of Privileges on 11 May 1989 for making a preliminary inquiry and submitting a report to me.

The Committee of Privileges submitted its report to me on 10 July 1989.

On receipt of this report, I forwarded a copy thereof to Mufti Mohammed Sayeed and gave him an opportunity to appear before me on 24 July 1989, to represent his case and to be heard in person but he did not appear on the scheduled date and time.

Taking into account the statements of Mufti Mohammed Sayeed in the two communications dated 10 March and 6 May 1989, and the report of the Committee of Privileges and in accordance with the provisions of article 102 (2) read with the Tenth Schedule to the Constitution of India, I hereby decide and declare by this order as follows :

Order

In exercise of the powers conferred upon me under article 102 (2) read with paragraph 6 of the Tenth Schedule to the Constitution of India, I, Shanker Dayal Sharma, Chairman, Rajya Sabha, hereby decide that Mufti Mohammed Sayeed, an elected member of the Rajya Sabha from the State of Jammu and Kashmir, by

voluntarily giving up his membership of the Congress (I) – his original political party, has become subject to disqualification for being a member of the Rajya Sabha in terms of paragraph 2(1) (a) of the Tenth Schedule to the Constitution of India.

Accordingly, Mufti Mohammed Sayeed has ceased to be a member of the Rajya Sabha with immediate effect."

(2) Decision of Dr. Shanker Dayal Sharma Chairman, Rajya Sabha, under paragraph 6(1) of the Tenth Schedule to the Constitution of India (Satya Pal Malik Case, Rajya Sabha 1989)*

The Chairman, Rajya Sabha, gave the following decision on 14 September 1989, on the petition of Shri Pawan Kumar Bansal, member, Rajya Sabha, in relation to Shri Satya Pal Malik, member, Rajya Sabha, under paragraph 6 (1) of the Tenth Schedule to the Constitution of India :-

"Shri Satya Pal Malik, an elected member of the Rajya Sabha from the State of Uttar Pradesh, addressed me a letter which was received by me on 17 July 1989, informing that he was elected to the Rajya Sabha on the Congress (I) ticket, that he had joined the Janata Dal and had been functioning as its Secretary. The said letter was referred by me to the Leader of the Congress (I) Legislature Party for information on 20 July 1989.

Shri Pawan Kumar Bansal, member, Rajya Sabha, filed before me a petition on 27 July 1989 under Paragraph 6 of the Tenth Schedule to the Constitution and Rule 6 of the Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985, praying that the Chairman, Rajya Sabha, be pleased to hold that Shri Satya Pal Malik, member, Rajya Sabha stands disqualified under the Tenth Schedule to the Constitution of India and also declare his seat in the Rajya Sabha vacant.

Copies of the petition and the annexure thereto were forwarded to Shri Satya Pal Malik and the Leader of the Congress (I) Party in Parliament, under Rule 7(3) of the said Rules, on 31 July 1989, with a request to them to forward their comments on the petition to me within seven days from the receipt of the same.

I received a letter dated 5 August 1989, from Shri Satya Pal Malik by way of his comments contending that he had not given up the membership of the Indian National Congress voluntarily.

Shri M.M. Jacob, Minister of State in the Ministry of Water Resources and Minister of State in the Ministry of Parliamentary Affairs, who had been authorised by the Leader of the Congress (I) Legislature Party for communicating with the Chairman for purposes of these Rules, in his comments dated 2 August 1989, stated that he entirely agreed with the contention of the petitioner.

After considering the comments of Shri Satya Pal Malik and Shri M.M. Jacob in relation to the petition, I was satisfied, having regard to the nature and circumstances of the case that it was necessary to refer the petition to the Committee of Privileges of Rajya Sabha and I referred the petition to the

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*See Gazette of India, Extraordinary Part (II) dt. 14 September 1989 and Rajya Sabha Bulletin Part (II) dt. 14 September 1989, Para No 31368.

Committee of Privileges on 8 August 1989, for making a preliminary inquiry and submitting a report to me.

The Committee of Privileges submitted its report to me on 1 September 1989.

On receipt of this report, I forwarded a copy thereof, to Shri Satya Pal Malik and gave him an opportunity to appear before me on 13 September 1989, to represent his case and to be heard in person. Shri Satya Pal Malik, accordingly, appeared before me and was heard.

Taking into account the letter of Shri Satya Pal Malik received by me on 17 July 1989, his comments on the petition, the Report of the Committee of Privileges and his oral submissions before me on 13 September 1989 and in accordance with the provisions of article 102 (2) read with the Tenth Schedule to the Constitution of India, I hereby decide and declare by this order as follows:–

Order

In exercise of the powers conferred upon me, under article 102(2) read with paragraph 6 of the Tenth Schedule to the Constitution of India, I, Shanker Dayal Sharma, Chairman, Rajya Sabha, hereby decide that Shri Satya Pal Malik, an elected member of the Rajya Sabha from the State of Uttar Pradesh, by voluntarily giving up his membership of the Congress (I) — his original political party, has become subject to disqualification for being a member of the Rajya Sabha in terms of paragraph 2(1) (a) of the Tenth Schedule to the Constitution of India.

Accordingly, Shri Satya Pal Malik has ceased to be a member of the Rajya Sabha with immediate effect."

ANNEXURE – E

Opinions of Attorney-General for India on some issues pertaining to the Anti-Defection Law

A. Opinion* of Attorney-General for India (Shri K. Parasaran) dated 20 July 1987 re: points raised by Shri K.P. Unnikrishnan, MP

The Law Ministry has not prepared the brief in the usual form probably to ensure that my view should in no way be influenced by the views of the Law Ministry. I have been furnished as Annexure I, the note of Shri Unnikrishnan, MP who has raised certain points on which the Lok Sabha Secretariat has not offered any comment. Annexure II is also a letter from Shri Unnikrishnan. On this also there is no comment of the Lok Sabha Secretariat. Annexure III is again a letter dated 6 May 1987 of Shri Unnikrishnan in which the Hon'ble member has suggested that the matter may be referred to me for my opinion. I will now set out below the facts as it appears from the papers sent to me.

2. As per the particulars/declaration filed under Rules 3 and 4 of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985 Shri K.P. Unnikrishnan, Shri V. Kishore Chandra Deo, Shri Sudarsan Das and Sahebrao Patil Dongaonkar had declared that their party affiliation as on the date of election to the Eighth Lok Sabha was Congress (S). On 1 December, 1986, the Hon'ble Speaker received from the then President of Congress (S), Shri Sharad Pawar a communication dated 30 November, 1986. The communication intimated that Shri K.P. Unnikrishnan and Shri Kishore Chandra Deo were expelled from the primary membership of the Party with immediate effect and pointed out that in view of this, they also ceased to be members of Congress (S) Parliamentary Party in the Lok Sabha. On the same day, the Hon'ble Speaker received another letter from Shri A. G. Kulkarni (I presume he is the leader of the Congress (S) Legislature Party) to the effect that at the meeting of the Congress (S) Parliamentary Party

* Received *vide* letter dt. 24 July 1987 from Shri K.C.D. Gangwani, Joint Secretary and Legal Advisor, Deptt. of Legal Affairs, Ministry of Law and Justice, Govt. of India.

held on 30 November, 1986, it was unanimously decided to elect him as the leader of the Congress (S) Parliamentary Party and Shri Sahebrao Patil Dongaonkar as the Deputy Leader of the Party. It was further mentioned in the said communication that in view of the disciplinary action for expulsion from the primary membership of the Party taken by the Congress Working Committee (S) against Shri K.P. Unnikrishnan and Shri V. Kishore Chandra Deo, they ceased to be members of the Congress (S) Parliamentary Party.

3. The above communications were placed before the Hon'ble Speaker who directed copies thereof be forwarded to Shri K.P. Unnikrishnan and Shri V. Kishore Chandra Deo on 1 December, 1986, they were informed that in view of their expulsion from the primary membership of the Congress (S) Party on whose tickets they were elected to the Lok Sabha, it was proposed to treat them as unattached members with immediate effect.

4. On 2 December, 1986, a letter dated 30 November, 1986 was received by the Hon'ble Speaker from Shri Sarat Chandra Sinha, the provisional President of the All India Congress Committee (S) Party enclosing copies of the resolutions adopted by the Congress Working Committee (S) *inter alia* to the effect that–

(1) Shri Sharad Pawar was removed from the Presidentship of the AICC(S) and from all other elective posts in the organisation and suspended from the membership of the Congress (S) Party;

(2) Shri Sarat Chandra Sinha has been elected as provisional President of the AICC(S), subject to the ratification of the AICC(S) meeting to be convened in Delhi in January, 1987;

(3) The Working Committee has rescinded its decision to hold its plenary session at Aurangabad (Maharashtra) and decided that if anybody convenes such a meeting, it would be unconstitutional and illegal and its decisions shall not be binding on any of the Committee office-bearers or Members of the Party;

(4) Shri Suresh Kalmadi, MP (Rajya Sabha) has been removed from all elective posts held by him in the Party and suspended from the primary membership of the Party;

(5) That Shri A. G. Kulkarni, MP (Rajya Sabha) be suspended from the primary membership of Congress (S);

(6) The Working Committee also revoked the illegal and unconstitutional suspension of Shri K. P. Unnikrishnan, MP and Shri V. Kishore Chandra Deo. MP

Letter to the above effect was received by the Speaker on 2 December, 1986 from Shri Sudarsan Das, MP and this communication was also placed before the Speaker. Shri Unnikrishnan addressed a letter to the Hon'ble Speaker which is Annexure III dated 6 May, 1987. On 8 December, 1986 Shri Sudarsan Das MP and Sahebrao Patil Dongaonkar, MP wrote to the Speaker that as per the decision of Congress (S) Working Committee, which was endorsed by the Congress (S) Plenary Session at Aurangabad, the Congress (S) Political Party had merged with Congress (I) Political Party. The members requested the Speaker to consider them as Congress (I). The request was forwarded to the Ministry of Parliamentary Affairs in which it was duly authorised by the Congress (I) Legislature Party. On 22 February 1987, a letter was received by the Speaker from the Ministry of Parliamentary Affairs intimating that by the merger of Congress (S) with Congress (I), Shri Sahebrao Patil Dongaonkar and Shri Sudarsan Das, members of the Lok Sabha have been admitted to the Congress (I) Party in Parliament and that they may be treated as members of the Congress (I) Party and allotted seats along with Congress (I) members.

5. Shri K. P. Unnikrishnan, MP has questioned the correctness of the decision of the Speaker to treat him as unattached consequent on his expulsion from Congress (S) Political Party, to which he originally belonged.

6. This is a case where the Congress (S) Party has merged with another political party namely, Congress (I). As per section 4(2) of the Constitution (Fifty-second Amendment) Act, such merger shall be deemed to have effect if not less than two-third of the members of the Legislature Party consented to such merger. When the merger is by more than two-third members of the Legislature Party, the requirement of section 4(a) of the Constitution (Fifty-second Amendment) Act 1985 is satisfied. But the members of the party who have opted not to so merge and therefore not accepted the merger have necessarily to function as a separate group under section 4(b). Those who have not merged with the Congress (I) Party cannot claim that they belong to the Congress (S) Party because that Party has in law merged with Congress (I) as requirements of section 4 of the Constitution (Fifty-second) Amendment are satisfied. It is open to the remaining members to opt to function as a separate group. Under Direction 120 of the Directions by the Speaker under the Rules of Procedure and Conduct of Business in Lok Sabha, the Speaker may recognise an association of members as a parliamentary party or group for the purpose of functioning in the House and his decision shall be final. Under Direction 121, *inter alia*, the group shall have at least strength equal to the quorum fixed to

constitute a sitting of the House, that is one-tenth of the total number of members of the House. Under Direction 121(b), an association of members who propose to form a parliamentary party shall have an organisation both inside and outside the House. An association of members to form a parliamentary group should satisfy the conditions specified in the Directions 120 and 121. It shall also have at least a strength of 30 members. Apparently, this requirement has not been satisfied. Therefore, the Hon'ble Speaker ordered to treat them as 'unattached' and allotted them seats as mentioned above.

7. I am of the view that the action taken by the Hon'ble Speaker is correct and in accordance with law. There is a merger of Congress (S) Party into Congress (I). The said merger satisfies the requirements of section 4 of the Constitution (Fifty-second Amendment) Act, 1985. The two Hon'ble members of Parliament Shri K.P. Unnikrishnan and Shri V. Kishore Chandra Deo, do not fall within the group of two-third members of the legislature party who have merged with Congress (I). Those who are merged cannot say that they belonged to Congress (S), because they have merged with Congress (I). The remaining members who are in the minority cannot certainly say that they belong to Congress (S) Party. If the requirements of Directions 120 and 121 are satisfied, the Speaker may recognise them as a Group or association in accordance with Directions 121 and 122. However, these requirements are not satisfied in the present case.

8. The contention raised by the Hon'ble member of Parliament, *inter alia*, is that the Speaker has no discretionary power to declare any member elected on a particular symbol of the Party either as not belonging to that party or as unattached. It is further contended that the communication dated 30 November, 1986 of Shri Sharad Pawar and Shri A.G. Kulkarni that Shri K.P. Unnikrishnan and Shri V. Kishore Chandra Deo were expelled from the party is of no relevance as they were strangers to the House and that the question as to whether there had been a split or merger in relation to Tenth Schedule of the Constitution has to be decided separately by the Speaker, if any occasion arises. I do not think the contentions are sustainable. Under section 6 of the Constitution (Fifty-second Amendment) Act, if any question arises as to whether a member of the House has become subject to disqualification under the Schedule, the question shall be referred to the decision of the Speaker of the House and his decision shall be final. If a person falls under section 4(1) (a) or 4(1) (b), he cannot be disqualified. Therefore, to decide as to whether he falls under one or the other of the provisions, the Speaker has jurisdiction to decide as to whether because of the merger there is any defection attracting the

disqualification of members. He has, therefore, to determine as to whether it falls under section 4(1) (b) or section 6. Once he has identified, necessarily Directions 120 and 121 operate. The Constitution Fifty-second Amendment Act does not confer on the Election Commission the power to decide this question as sought to be contended by the hon'ble member.

If the said contention of the hon'ble member is correct, every time when there is a dispute as to whether a group of persons have become disqualified, the matter will have to go to Election Commission for decision. This does not flow either from the relevant provisions of the Constitution including article 118 and the provisions of the Constitution Fifty-second Amendment Act. I am of the view that the decision of the Hon'ble Speaker is legally correct.

9. The contention as to whether Shri Sharad Pawar and Shri A.G. Kulkarni not being members of the Legislature Party should not have communicated to the Presiding Officer the state of affairs is really academic. Before the Speaker decided on 5 December, persons belonging to Congress (S) Legislature Party had communicated the facts to the Speaker. The Congress (I) Legislature Party through Shri H.K.L. Bhagat, Minister of Parliamentary Affairs has also confirmed the position. I do not think there is substance in this technical contention in view of the facts and circumstances of this case. The Hon'ble Speaker was, therefore, right when he declared Shri Unnikrishnan, MP as 'unattached'.

B. Opinion* of Attorney-General for India (Shri K. Parasaran) dated 12 January 1988 relating to certain difficulties in the implementation of the Constitution (Fifty-second Amendment) Act, 1985

I have perused the statement of case for my opinion prepared by the Ministry of Law and Justice (Department of Legal Affairs) relating to certain difficulties in the implementation of the Constitution Fifty-second Amendment Act. The facts necessitating the queries for my opinion have been set out in the statement of the case and I am not adverting to the same. I am setting out the queries and the respective answers thereto hereunder.

Query (i)

Whether (in the context of the controversy in Punjab over the recognition accorded by the Speaker to a faction of the Akali Dal as a separate group and its subsequent de-recognition by the new Speaker), it would not be desirable to lay down the definition of a political party/legislature party and also to specify the conditions for recognition as much in the Anti-Defection Rules?

Answer

Para 1(b) of the Tenth Schedule, which is added to the Constitution of India by the Constitution Fifty-second Amendment Act of 1985 defines "Legislature Party" and para 1(c) of the said Schedule defines "original political party". The amendment does not contemplate recognition of a separate group as a political party as such. Para 3 of the said Schedule however provides that disqualification on ground of defection will not apply in case of a split provided that the group representing a faction which has arisen as a result of the split in the original political party consists of not less than one-third of the members of such legislature party and that from the time of the split this faction will be deemed to be a 'political party' for the purposes of para 2(1) and 'original political party' for the purposes of para 3. Thus, it would be open for the Speaker to accord recognition to a group if the group satisfies the above condition. It would be advisable to specify the conditions for recognition in the Anti-defection Rules as it would be clarificatory and put the position beyond doubt. It is also desirable provided it is found practicable to define 'political party'.

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* Received *vide* letter dt. 15 February 1988 from Shri K.C.D. Gangwani, Joint Secretary and Legal Advisor, Deptt. of Legal Affaris, Ministry of Law and Justice, Govt. of India.

Query (ii)

Whether in case of dispute regarding 'the leadership of a legislature party/ group, the Speaker should accept the advice tendered to him by the leader of the Parliamentary Party duly supported by the leader of the original political party or accept the contention of the dissenting members of the party/group provided the latter constitute a majority of the total number of members of the concerned legislature party and, if so, whether the rules need some modification to take care of such a situation.

Answer

The question postulates a dispute. Once there is a dispute, the authority who has jurisdiction to resolve that dispute has to act in a quasi-judicial character complying with the norms of fair-play. In a democracy, it is the rule of the majority. So, if a dispute is raised regarding the leadership of a legislature party/group, the Speaker has to afford an opportunity to the contestants to place the material and evidence on which each side places reliance. The person elected as leader by that group which constitutes the majority of the total number of members of the concerned legislature party should be the one who should be recognised as the leader of the legislature party. If majority of the party supports the person who is already leader of the parliamentary party, and supported also by the leader of the original political party, and if they happen to command a majority, no further question will arise. But if they do not command a majority of the legislature party, the Speaker will have to decide on the facts of each case. In situations where there is a split which satisfies requirements of para 3, the group representing a faction which splits away has to consist of not less than one-third of the members of such legislature party. So, a break-away group may in certain situations, command even more than 51 per cent instead of one-third. In such situations, necessarily the Speaker will have to go by the rule of the majority. In case of dispute regarding leadership, it is the voice of the group which has the majority of the concerned legislature party that will have to be accepted. This view gets support from the rules of the Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985. The expression "leader" has been defined under rule 2(f). In terms of the above provision, "leader" in relation to a legislature party means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act in the absence of the leader as, or discharge the functions of the leader of the party for purposes of the rules. If a person satisfies the requirements of para 3, he will be the leader and

the group of which he is the leader will be deemed to be the original political party. It is worthwhile considering amending the definition of the term "leader" in the rules to make it explicit to cover such situations and put the matter beyond doubt.

Query (iii)

Whether a member who is declared unattached by the Speaker consequent upon his expulsion from the original political party is free to form a new party or join another party without incurring disqualification.

Answer

Disqualification for a member of Parliament is provided for in article 102 of the Constitution and for a member of Legislative Assembly by article 191. The Tenth Schedule introduced by the Fifty-second Amendment provides for disqualification on the ground of defection in para 2. None of these provisions provides that upon expulsion from the original political party a member who is declared unattached incurs any disqualification notwithstanding the fact that he forms a new party or joins another party. However, on that ground alone an expelled member who forms a new party or joins another party cannot be held not to incur disqualification in terms of the Constitution Fifty-second Amendment Act. It is true that an expelled member ceases to be a member of that party to which he belonged but that is for the purpose of party discipline. In the interest of democracy the matter should be approached from a broader perspective. A person belonging to a particular political party must owe allegiance to that party. He is bound by the discipline of that party. Not only is there a moral and political compulsion but so long as he belongs to that party, he has a duty to see that nothing he does prejudices in any manner the effective functioning of that party as a political party. In the light of the above background it has to be examined whether disqualification is incurred by a member of the party who has been expelled from the party in the event of certain overt acts on his part after he is expelled.

The provisions for disqualification have to be strictly construed. A member cannot voluntarily give up membership of his political party except under peril of incurring constitutional disqualification under para 2(1) (a) of the Tenth Schedule. As he has not voluntarily given up the membership of his original party but stands expelled, he does not incur disqualification under para 2(1) (a) of the Tenth Schedule. It may be possible to interpret the relevant provision that an expelled member of a party, as he does not incur disqualification because he did not voluntarily give up membership of his original political party though he suffers expulsion, cannot any

more belong to the political party from which he was expelled. So unless he can bring himself within the scope of a split of the original political party which group consists of not less than one-third of the members of such legislature party, he cannot belong to any other party. While he can therefore continue to be a member but is declared unattached, he cannot on the basis of the expulsion from the original political party form a new party or join a new party without incurring disqualification. This situation does not flow by operation of para 2(1) (a) of the Tenth Schedule because he has not voluntarily given up membership of his original political party. This situation flows for the reason that being a member of the House he makes a claim of belonging to another party which does not constitute a group representing a faction which has arisen as a result of a split in his original political party and which group consists of not less than one-third of the members of such legislature party. In this connection, I have to advert to para 2(2) of the Tenth Schedule which is as follows:–

> "(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election."

An elected member of a House who has been elected otherwise than as a candidate set up by any political party (that is, who was elected as an independent candidate) will incur disqualification for being a member of the House if he joins any political party after such an election. If so, an expelled member from a political party cannot stand on a better footing than an independent member. While he will not incur disqualification as he has not voluntarily given up his membership but has been expelled, he will nevertheless incur a disqualification if when functioning as an unattached member he forms a new party or joins another party.

It may be that my view on this question may be on straining the language of the relevant provisions of the Tenth Schedule. It is not as if the contrary position cannot be argued at all. But I have taken this view bearing in mind the purpose underlying the Fifty-second Amendment Act to the Constitution, the mischief which it sought to suppress and the remedy which it sought to advance.

It is time to think of suitable amendments to the Tenth Schedule to place the matter beyond doubt so that the functioning of a healthy democracy is not impeded by defectors, taking advantage of expulsion, acting to the prejudice of the party on whose ticket they were elected and from which they were expelled for reasons of misconduct or other blameable conduct in the context of party discipline.

ANNEXURE – F

Presiding Officers of Lok Sabha, Rajya Sabha and State Legislatures

Lok Sabha

Speakers

Sl. No.	Name	Period	
		From	To
1.	Shri G.V. Mavalankar	15.5.1952 - 27.2.1956	
2.	Shri M.A. Ayyangar	8.3.1956 - 10.5.1957; 11.5.1957 - 16.4.1962	
3.	Sardar Hukum Singh	17.4.1962 - 16.3.1967	
4.	Shri N. Sanjiva Reddy	17.3.1967 - 19.7.1969	
5.	Dr. G.S. Dhillon	8.8.1969 - 19.3.1971; 22.3.1971 - 1.12.1975	
6.	Shri B.R. Bhagat	5.1.1976 - 25.3.1977	
7.	Shri N. Sanjiva Reddy	26.3.1977 - 13.7.1977	
8.	Shri K.S. Hegde	21.7.1977 - 21.1.1980	
9.	Dr. Bal Ram Jakhar	22.1.1980 -15.1.1985; 16.1.1985 - 18.12.1989	
10.	Shri Rabi Ray	19.12.1989 - 9.7.1991	
11.	Shri Shivraj V. Patil	10.7.1991 - 22.5.1996	
12.	Shri Purno Agitok Sangma	23.5.1996 - 23.3.1998	
13.	Shri G.M.C. Balayogi	24.3.1998 - 20.10.1999; 22.10.1999 - 3.3.2002	
14.	Shri Manohar Joshi	10.5.2002 - 2.6.2004	
15.	Shri Somnath Chatterjee	4.6.2004 -	

Deputy Speakers who performed the duties of the Office of Speaker

Sl. No.	Name	Period From To
1.	Shri M.A. Ayyangar	27.2.1956 - 7.3.1956
2.	Shri R.K. Khadilkar	19.7.1969 - 7.8.1969
3.	Shri G.G. Swell	1.12.1975 - 5.1.1976
4.	Shri Godey Murahari	13.7.1977 - 21.7.1977
5.	Shri P.M. Sayeed	3.3.2002 - 10.5.2002

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri M.A. Ayyangar	30.5.1952 - 7.3.1956
2.	Sardar Hukum Singh	20.3.1956 - 4.4.1957; 17.5.1957 - 31.3.1962
3.	Shri S.V. Krishnamurthy Rao	23.4.1962 - 3.3.1967
4.	Shri R.K. Khadilkar	28.3.1967 - 1.11.1969
5.	Shri G.G. Swell	9.12.1969 - 27.12.1970; 27.3.1971 - 18.1.1977
6.	Shri Godey Murahari	1.4.1977 - 22.8.1979
7.	Shri G. Lakshmanan	1.2.1980 - 31.12.1984
8.	Shri M. Thambi Durai	22.1.1985 - 27.11.1989
9.	Shri Shivraj V. Patil	19.3.1990 - 13.3.1991
10.	Shri S. Mallikarjunaiah	13.8.1991 - 10.5.1996

11.	Shri Suraj Bhan	12.7.1996 - 4.12.1997
12.	Shri P. M. Sayeed	17.12.1998 - 26.4.1999; 27.10.1999 - 6.2.2004.
13.	Shri Charnjit Singh Atwal	9.6.2004 -

Rajya Sabha

Chairmen

Sl. No.	Name	Period From To
1.	Dr. Sarvepalli Radhakrishnan*	13.5.1952-12.5.1957; 13.5.1957 - 12.5.1962
2.	Dr. Zakir Husain**	13.5.1962-12.5.1967
3.	Shri Varahagiri Venkata Giri@	13.5.1967-20.7.1969
4.	Dr. Gopal Swarup Pathak	31.8.1969-30.8.1974
5.	Shri Basappa Danappa Jatti@@	31.8.1974-30.8.1979
6.	Shri M. Hidayatullah #	31.8.1979-30.8.1984
7.	Shri R. Venkataraman	31.8.1984-24.7.1987
8.	Dr. Shanker Dayal Sharma	3.9.1987-24.7.1992
9.	Shri K.R. Narayanan	21.8.1992-24.7.1997
10.	Shri Krishan Kant	21.8.1997 - 27.7.2002
11.	Shri Bhairon Singh Shekhawat	19.8.2002 -

* Discharged the functions of President from 20.6.1960 to 5.7.1960 when Dr. Rajendra Prasad, the then President visited USSR. Also discharged the functions of President from 25.7.1961 to 19.12.1961 due to illness of Dr. Rajendra Prasad, the then President.

** Discharged the functions of President from 5.2.1964 to 21.2.1964 and again from 16.3.1965 to 18.4.1965 when Dr. Radhakrishanan the then President underwent an Eye operation.

@ Discharged the functions of President from 3.5.1969 to 20.7.1969 due to the death of Dr. Zakir Hussain, the then President on 3.5.1969. Shri Giri resigned on 20.7.1969 as Vice President and also as acting President.

@@ Discharged the functions of President from 12.2.1977 to 24.7.1997 due to the death of Shri Fakhruddin Ali Ahmed, the then President on 11.2.1977.

\# Discharged the functions of President from 25.7.1961 to 19.12.1961 when Giani Zail Singh, the then President went abroad for his medical treatment.

Deputy Chairmen who performed the duties of the Office of Chairman

Sl. No.	Name	Period From To
1.	Smt. Violet Alva	20.7.1969 - 30.8.1969
2.	Smt. Pratibha Devisingh Patil	25.7.1987 - 2.9.1987
3.	Dr. (Smt.) Najma Heptulla	25.7.1992 - 20.8.1992;
		25.7.1997 - 20.8.1997;
		28.7.2002 - 18.8.2002

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Shri S.V. Krishnamoorthy Rao	31.5.1952 - 2.4.1956;
		25.4.1956 - 1.3.1962
2.	Smt. Violet Alva	19.4.1962 - 2.4.1966;
		7.4.1966 - 16.11.1969
3.	Shri B.D. Khobragade	17.12.1969 - 2.4.1972
4.	Shri Godey Murahari	13.4.1972 - 2.4.1974;
		26.4.1974 - 20.3.1977
5.	Shri Ram Niwas Mirdha	30.3.1977 - 2.4.1980
6.	Shri Shyam Lal Yadav	30.7.1980 - 2.4.1982;
		28.4.1982 - 29.12.1984
7.	Dr. (Smt.) Najma Heptulla	25.1.1985 - 20.1.1986
8.	Shri M.M. Jacob	26.2.1986 - 22.10.1986
9.	Smt. Pratibha Devisingh Patil	18.11.1986 - 5.11.1988

10.	Dr. (Smt.) Najma Heptulla	18.11.1988 - 4.7.1992 10.7.1992 - 4.7.1998; 9.7.1998 - 10.6. 2004
11.	Shri K. Rahman Khan	22.7.2004-

State Legislatures

Andhra Pradesh Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Nallapati Venkataramaiah	24.11.1953 - 21.4.1955
2.	Shri Rokkam Lakshminarasimham Dora	23.4.1955 - 3.12.1956
3.	Shri Ayyadevara Kaleswara Rao	4.12.1956 - 26.2.1962
4.	Shri B.V. Subba Reddy	20.3.1962 - 14.3.1967; 20.3.1967 - 31.7.1970; 3.12.1970 - 29.9.1971
5.	Shri K.V.Vema Reddy	25.11.1971 - 19.3.1972
6.	Shri Pidatala Ranga Reddy	21.3.1972 - 25.9.1974
7.	Shri R. Dasaratharama Reddy	28.1.1975 - 14.3.1978
8.	Shri Divi Kondaiah Chowdhary	16.3.1978 - 6.10.1980
9.	Shri Kona Prabhakara Rao	24.2.1981 - 22.9.1981
10.	Shri Agarala Eswar Reddy	7.9.1982 - 16.1.1983
11.	Shri Tangi Satyanarayana	18.1.1983 - 28.8.1984
12.	Shri Nissankararao Venkataratnam	20.9.1984 - 10.1.1985
13.	Shri G. Narayana Rao	12.3.1985 - 26.9.1989
14.	Shri P. Ramachandra Reddy	4.1.1990 - 22.12.1990
15.	Shri D. Sripadha Rao	9.8.1991 - 11.1.1995
16.	Shri Yanamala Ramakrishnudu	12.1.1995 - 10.10.1999
17.	Smt. Kavali Prathibha Bharathi	11.11.1999 - 30.5.2004
18.	Shri K.R. Suresh Reddy	1.6.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Pasala Suryachandra Rao	24.11.1953 - 15.11.1954
2.	Shri Kalluru Subba Rao	27.4.1955 - 15.4.1957
3.	Shri Konda Laxman Bapuji	16.4.1957 - 11.1.1960
4.	Smt. T.N. Sada Lakshmi	15.3.1960 - 1.3.1962
5.	Shri Vasudev Krishnaji Naik	7.7.1962 - 28.2.1967; 29.3.1967 - 1.3.1972
6.	Shri C. Jagannadha Rao	28.3.1972 - 18.3.1974
7.	Shri Md. Syed Rahmath Ali	26.3.1974 - 1.3.1978
8.	Shri K. Prabhakar Reddy	28.3.1978 - 13.2.1980
9.	Shri A. Easwar Reddy	27.3.1981 - 6.9.1982
10.	Shri I. Lingaih	8.9.1982 - 7.1.1983
11.	Shri A. Bheem Reddy	22.3.1983 - 28.8.1984
12.	Shri A.V. Suryanarayana Raju	12.3.1985 - 29.11.1989
13.	Shri Alapati Dharma Rao	20.3.1990 - 28.9.1993
14.	Shri Buragadda Veda Vyas	29.12.1993 - 10.12.1994
15.	Shri N. Mohd. Farooq	17.1.1995 - 9.10.1999
16.	Shri K. Chandrasekhar Rao	17.11.1999 - 1.5.2001
17.	Shri K. Harishwar Reddy	31.12.2001 - 14.11.2003

Arunachal Pradesh Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Nokme Namati	15.8. 1975 - 13.3.1978
2.	Shri Padi Yube	22.3.1978 - 17.9.1979
3.	Shri Nokme Namati	30.10.1979 - 28.1.1980
4.	Shri T.L. Rajkumar	29.1.1980 - 22.3.1985; 22.3.1985 - 6.3.1990
5.	Shri Lijum Ranya	27.3.1990 - 21.3.1995
6.	Shri Tako Dabi	25.3.1995 - 21.5.1998
7.	Shri Chowna Mein	25.5.1998 -10.10.1998
8.	Shri Tamiyo Taga	14.10.1999 - 2.8.2003
9.	Shri Setong Sena	18.8.2003 - 15.10.2004 26.10.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Padi Yube	18.8. 1975 - 21.3.1978
2.	Shri Tadik Chiji	23.8.1978 - 2.11.1979
3.	Shri P.W. Sona	29.1.1980 - 2.1.1985
4.	Shri Chera Talo	23.3.1985 - 5.3.1990
5.	Shri C.C. Singpho	27.3.1990 - 18.3.1995

6.	Shri Hari Notung	25.3.1995 - 26.9.1996
7.	Shri Daklo Nidak	27.9.1996 - 21.5.1998
8.	Shri Setong Sena	25.5.1998 -27.7.1999
9.	Shri Rajesh Tacho	14.10.1999 - 2.8.2003
10.	Shri Ninong Ering	18.8.2003 - 6.7.2004
11.	Shri Takar Marde	20.10.2004 -

Assam Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Babu Basanta Kumar Das	7.4. 1937 - 11.3.1946
2.	Shri Debeswar Sarmah	12.3.1946 - 10.10.1947
3.	Shri Laksheswar Barooah	5.11.1947 - 3.3.1952
4.	Shri Kuladhar Chaliha	5.3.1952 - 7.6.1957
5.	Shri Dev Kant Barooah	8.6.1957 - 15.9.1959
6.	Shri Mahendra Mohan Choudhury	9.12.1959 - 19.3.1967
7.	Shri Hareswar Goswami	20.3.1967 - 10.5.1968
8.	Shri Mahi Kanta Das	27.8.1968 - 21.3.1972
9.	Shri Ramesh Ch. Barooah	22.3.1972 - 20.3.1978
10.	Shri Jogendra Nath Hazarika	21.3.1978 - 4.9.1979
11.	Shri Sheikh Chand Mohammad	7.11.1979 - 7.1.1986
12.	Shri Pulakesh Barua	9.1.1986 - 27.7.1991
13.	Shri Jiba Kanta Gogoi	29.7.1991 - 9.12.1992
14.	Shri Debesh Chandra Chakravorty	21.12.1992 - 11.6.1996
15.	Shri Ganesh Kutum	12.6.1996 - 24.5.2001
16.	Shri Prithibi Majhi	30.5.2001 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Moulavi Muhammad Amiruddin	7.4.1937 - 1946
2.	Smt. Bonily Khongmen	14.3.1946
3.	Shri R.N. Baruah	6.3.1952 - 1.4.1957; 10.6.1957 - 28.2.1962
4.	Shri D. Hazarika	31.3.1962 - 28.2.1967
5.	Shri M.K. Das	31.3.1967 - 26.8.1968
6.	Shri A. Rahman	20.9.1968 - 9.11.1970
7.	Shri J. Saikia	13.11.1970 - 24.5.1971
8.	Shri R.N. Sen	4.5.1971 - 14.3.1972
9.	Shri G.C. Rajbongshi	6.4.1972 - 3.3.1978
10.	Shri Sheikh Chand Mohammad	30.3.1978 - 6.11.1979
11.	Shri G. Ahmed	13.11.1979 - 19.3.1982
12.	Shri N.C. Kath Hazarika	25.3.1983 - 18.8.1985
13.	Shri Bhadreswar Buragohain	1.4.1986 - 10.4.1990
14.	Shri Balobhadra Tamuli	22.10.1990 - 8.1.1991
15.	Shri Debesh Chakraborty	1.8.1991 - 20.12.1992
16.	Shri Prithibi Majhi	23.3.1993 - 11.5.1996
17.	Shri Nurul Hussain	13.6.1996 - 18.8.1998
18.	Smt. Renupoma Rajkhowa	14.5.1999 - 17.5. 2001
19.	Shri Tanka Bahadur Rai	3.4.2002 -

Bihar Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Bindhyeshwari Prasad Verma	25.4.1946 - 14.3.1962
2.	Dr. Laxmi Narayan Sudhanshu	15.3.1962 - 15.3.1967
3.	Shri Dhanik Lal Mandal	16.3.1967 - 10.3.1969
4.	Shri Ram Narayan Mandal	11.3.1969 - 20.3.1972
5.	Shri Hari Nath Misra	21.3.1972 - 26.6.1977
6.	Shri Tripurari Prasad Singh	28.6.1977 - 22.6.1980
7.	Shri Radhanandan Jha	24.6.1980 - 1.4.1985
8.	Shri Shiv Chandra Jha	4.4.1985 - 23.1.1989
9.	Shri Md. Hidayatullah Khan	27.3.1989 - 19.3.1990
10.	Shri Gulam Sarwar	20.3.1990 - 9.4.1995
11.	Shri Deo Narayan Yadav	12.4.1995 - 7.3.2000
12.	Shri Sadanand Singh	9.3.2000 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Deo Sharan Singh	24.4.1946 - 31.3.1952
2.	Shri Jagat Narain Lal	16.5.1952 - 1957
3.	Shri Prabhu Nath Singh	21.5.1957 - 1961-62
4.	Shri Satyendra Narain Agrawal	6.4.1962 - 1966-67

5.	Shri Yogendra Prasad	30.3.1967 - 26.2.1969
6.	Shri Shakoor Ahmad	1.7.1970 - 8.1.1972; 4.6.1972 - 30.4.1977
7.	Shri Radhanandan Jha	26.7.1977 - 17.2.1980
8.	Shri Gajendra Prasad Himanshu	22.12.1980 - 6.3.1985
9.	Shri Shiva Nandan Paswan	30.7.1985 - 14.11.1989
10.	Shri Raghuvansh Prasad Singh	24.1.1990 - 5.3.1990
11.	Shri Devendra Nath Champia	22.3.1990 - 15.3.1995
12.	Shri Jagbandhu Adhikari	25.7.1996 - 1.3.2000
13.	Shri Bhola Prasad Singh	17.12.2002 - 6.3.2005

Legislative Council

Chairmen

Sl. No.	Name	Period From To
1.	Shri Rajiv Ranjan Prasad Sinha	23.7.1937 - 1948
2.	Shri Shyama Prasad Singh	7.9.1948 - 11.5.1952; 15.5.1952 - 6.5.1958
3.	Shri Rai Brajraj Krishna	7.4.1959 - 6.5.1962
4.	Shri Ravaneshwar Mishra	11.9.1962 - 6.5.1964
5.	Shri Devsharan Singh	30.8.1965 - 6.5.1968
6.	Shri Abdul Gafoor	5.6.1972 - 2.7.1973
7.	Dr. Ram Govind Singh	19.3.1975 - 6.5.1976
8.	Shri Prithvi Chand Kisku	25.7.1980 - 12.1.1985
9.	Prof. Arun Kumar	5.7.1985 - 3.10.1986
10.	Dr. Umeshwar Prasad Verma	19.1.1990 - 6.5.1994
11.	Prof. Jabir Hussain	26.7.1996 - 6.5.2000; 30.6.2000 -

Acting Chairmen/ Deputy Chairmen who performed the duties of the Office of Chairman

Sl. No.	Name	Period From To
1.	Smt. Naima Khatoon Hyder	12.5.1952 - 15.5.1952
2.	Shri Rameshwar Prasad Singh	4.4.1959 - 7.4.1959
3.	Shri Radha Govind Prasad	7.5.1962 - 10.9.1962

4.	Shri Kumar Ganga Nand Singh	7.5.1964 - 24.9.1964
5.	Smt. Ram Pyari Devi	17.3.1972 - 6.5.1972
6.	Shri Anil Kumar Sen	7.5.1972 - 5.6.1972
7.	Shri Mahendra Prasad	5.1.1975 - 6.1.1975
8.	Dr. Ram Govind Singh	7.1.1975 - 18.3.1975
9.	Shri Krishna Kant Singh	18.3.1975 - 19.3.1975
10.	Shri Shamu Charan Tuvid	14.6.1980 - 24.7.1980
11.	Ms. Rajeshwari Saroj Das	18.1.1985 - 29.1.1985
12.	Dr. Umeshwar Prasad Verma	4.10.1986 - 18.1.1990;
13	Dr. Raghuvansh Prasad Singh	7.5.1994 - 5.4.1995
14.	Prof. Jabir Hussain	6.4.1995 - 25.7.1996;
		7.5.2000 - 29.6.2000

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Shri Shyama Prasad Singh	4.6.1946 - 7.9.1948
2.	Shri Rai Brajraj Krishna	7.5.1958 - 4.4.1959
3.	Shri Thiyodor Bodra	24.9.1964 - 30.8.1965;
		7.5.1968 - 16.3.1972
4.	Dr. Ram Govind Singh	2.7.1973 - 5.1.1975
5.	Ms. Rajeshwari Saroj Das	7.5.1976 - 6.5.1980
6.	Shri Md. Wali Rehmani	29.1.1985 - 30.7.1985
		23.1.1990 - 6.5.1990
7.	Shri Ramanand Yadav	30.7.1996 - 29.7.1998

Chhattisgarh Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Rajendra Prasad Shukla	14.12.2000 - 22.12.2003
2.	Shri Prem Prakash Pandey	22.12.2003 -

Goa, Daman and Diu Legislative Assembly (U.T.)

Speakers

Sl. No.	Name	Period From To
1.	Shri Pandurang P. Shirodkar	10.1.1964 - 11.4.1967
2.	Shri Gopal Apa Kamat	13.4.1967 - 23.3.1972
3.	Shri Narayan S. Fugro	24.3.1972 - 20.1.1980
4.	Shri Froilano Machado	21.1.1980 - 22.3.1984
5.	Shri Dayanand G. Narvekar	5.4.1984 - 16.9.1989

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri A.K.S. Usgaonkar	15.1.1964 - 28.3.1966
2.	Shri M.R. Jiwani	1.4.1966 - 2.12.1966
3.	Shri Manju B.N. Gaonkar	18.4.1967 - 25.3.1971
4.	Shri Shaba Krishnarao Desai	7.4.1971 - 13.3.1972
5.	Shri Chandrakant U. Chodankar	28.3.1972 - 26.4.1977
6.	Shri Makanbhai M. Bathela	13.6.1977 - 26.4.1979
7.	Shri Vaikunt Govind Desai	22.1.1980 - 7.1.1985
8.	Dr. Shamji Bhai B. Solanki	21.1.1985 - 30.5.1987
9.	Shri Shambu Bhau Bandekar	2.7.1987 - 9.2.1989

Legislative Assembly (Goa State)

Speakers

Sl. No.	Name	Period From To
1.	Dr. Luis Proto Barbosa	22.1.1990 - 14.4.1990
2.	Shri Surendra Sirsat	26.4.1990 - 4.4.1991
3.	Shri Shaikh Hassan Haroon	26.7.1991 - 12.1.1995
4.	Shri Tomazinho Cardozo	16.1.1995 - 14.6.1999
5.	Shri Pratapsingh Raoji Rane	15.6.1999 - 11.6.2002
6.	Shri Vishwas Satarkar	12.6.2002 - 28.2.2005
7.	Shri Francisco Sardinha	28.2.2005 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Simon Peter D'Souza	22.1.1990 - 10.4.1990
2.	Shri Prakash S. Velip	12.4.1990 - 25.2.1991
3.	Shri Simon Peter D'Souza	27.2.1991 - 12.12.1994
4.	Shri Deu Gunaji Mandrekar	16.1.1995 - 30.11.1998
5.	Shri Aleixo Sequeira	8.7.1999 - 19.11.1999
6.	Shri Ulhas G. Asnodkar	30.12.1999 - 27.2.2002
7.	Shri Narhari Haldankar	14.6.2002 - 28.2.2005

Gujarat Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Kalyanji V. Maheta	1.5.1960 - 19.8.1960
2.	Shri Mansinghji Rana	19.8.1960 - 19.3.1962
3.	Shri Fatehali Palejwala	19.3.1962 - 17.3.1967
4.	Shri Raghavaji Leuva	17.3.1967 - 28.6.1975
5.	Shri Kundanlal Dholakiya	28.6.197528.3.1977; 21.4.1977 - 20.6.1980
6.	Shri Natavarlal Shah	20.6.1980 - 8.1.1990
7.	Shri Barajorji Paradiwala	19.1.1990 - 16.3.1990
8.	Shri Sashikant Lakhani	16.3.1990 - 12.11.1990
9.	Shri Himmatlal Mulani	11.2.1991 - 21.3.1995
10.	Shri Harishchandra Patel	21.3.1995 - 16.9.1996
11.	Shri Gumansinghji Vaghela	29.10.1996 - 19.3.1998
12.	Shri Dhirubhai Shah	19.3.1998 - 27.12.2002
13.	Prof. Mangalbhai Patel	27.12.2002 -

Acting Speakers/ Deputy Speakers who performed the duties of the Office of Speaker

Sl. No.	Name	Period From To
1.	Shri Manubhai Palakhiwala	28.3.1977 - 21.4.1977
2.	Dr. Karasandas Soneri	8.1.1990 - 19.1.1990

3.	Shri Manubhai Parmar	12.11.1990 - 11.2.1991
4.	Shri Chandubhai Dabhi	16.9.1996 - 29.10.1996

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Ambalal Shah	23.8.1960 - 1.3.1962
2.	Shri Premajibhai T. Leuva	22.3.1962 - 28.2.1967
3	Shri Vasantlal Mahela	27.3.1967 - 13.5.1971
4.	Shri Rameshchandra Parmar	28.3.1972 - 6.3.1974
5.	Shri Manubhai Palakhiwala	30.3.1975 - 17.2.1980
6.	Shri Ramanikbhai Dhami	27.6.1980 - 8.3.1985
7.	Dr. Karasandas Soneri	26.3.1985 - 2.3.1990
8.	Shri Manubhai Parmar	21.3.1990 - 13.6.1992
9.	Shri Mansinh K. Patel	16.8.1993 - 11.3.1995
10.	Shri Chandubhai Dabhi	30.3.1995 - 26.12.1997
11.	Shri Upendra Trivedi	31.3.2000 to 19.7.2002

Haryana Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Smt. Shanno Devi	6.12.1966 - 17.3.1967
2.	Rao Birender Singh	17.3.1967 - 23.3.1967
3.	Shri Sri Chand	30.3.1967 - 19.7.1967
4.	Brigadier Ran Singh	15.7.1968 - 3.4.1972
5.	Shri Banarsi Dass Gupta	3.4.1972 - 15.11.1973
6.	Shri Sarup Singh	16.11.1973 - 4.7.1977
7.	Brigadier Ran Singh	4.7.1977 - 8.5.1978
8.	Colonel Ram Singh	15.5.1978 - 24.6.1982
9.	Sardar Tara Singh	24.6.1982 - 9.7.1987
10.	Shri Harmohinder Singh Chatha	9.7.1987 - 9.7.1991
11.	Shri Ishwar Singh	9.7.1991 - 22.5.1996
12.	Shri Chhattar Singh Chauhan	22.5.1996 - 27.7.1999
13.	Shri Ashok Kumar	28.7.1999 - 1.3.2000
14.	Shri Satbir Singh Kadian	9.3.2000 - 21.3.2005
15.	Shri H. S. Chatha	21.3.2005 -

Acting Speakers/ Deputy Speakers who performed the duties of the Office of Speaker

Sl. No.	Name	Period From To
1.	Shri Manphool Singh	20.7.1967 - 21.11.1967
2.	Shri Faqir Chand	27.7.1999 - 28.7.1999

Deputy Speakers

Sl. No.	Name	Period From To
1.	Smt. Shanno Devi	1.11.1966 - 5.12.1966
2.	Shri Multan Singh	6.12.1966 - 28.2.1967
3.	Shri Manphool Singh	17.3.1967 - 21.7.1967
4.	Smt. Lekhwati Jain	22.7.1968 - 21.1.1972
		5.4.1972 - 30.4.1977
6.	Kanwar Vijay Pal Singh	6.7.1977 - 19.4.1982
7.	Shri Ved Pal	24.6.1982 - 23.6.1987
8.	Shri Kulbir Singh	9.7.1987 - 14.11.1990
9.	Shri Vasu Dev Sharma	5.3.1991 - 23.3.1991
10.	Shri Sumer Chand Bhatt	9.7.1991 - 10.5.1996
11.	Shri Faqir Chand	22.5.1996 - 14.12.1999
12.	Shri Gopi Chand Gahlot	15.3.2000 - 4.1.2005
13.	Shri Azad Mohammad	21.3.2005 -

Himachal Pradesh Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Jaiwant Ram	24.3.1952 - 31.10.1956
2.	Shri Des Raj Mahajan	4.10.1963 - 18.3.1967; 20.3.1967 - 19.3.1972
3.	Shri Kultar Chand Rana	28.3.1972 - 29.6.1977
4.	Shri Sarvan Kumar	30.6.1977 - 18.4.1979
5.	Shri T.S. Negi	8.5.1979 - 21.6.1982; 22.6.1982 - 14.9.1984
6.	Smt. Vidya Stokes	11.3.1985 - 19.3.1990
7.	Shri Radha Raman Shastri	21.3.1990 - 17.8.1990
8.	Shri T.S. Negi	20.8.1990 - 14.12.1993
9.	Shri Kaul Singh Thakur	15.12.1993 - 12.3.1998
10.	Shri Gulab Singh Thakur	30.3.1998 - 7.3.2003
11.	Shri G.R. Mussafir	11.3.2003 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Krishan Chand	27.3.1952 - 31.10.1956
2.	Shri Tapendra Singh	17.10.1963 - 12.1.1967
3.	Shri Amin Chand	29.3.1967 - 17.3.1972

4.	Shri Lekh Ram Thakur	30.3.1972 - 21.4.1977
5.	Shri Ranjit Singh Verma	4.7.1977 - 9.5.1980
6.	Shri Vijay Kumar Joshi	29.6.1982 - 23.1.1985
7.	Shri Dev Raj Negi	7.3.1986 - 16.3. 1989
8.	Shri Ram Nath Sharma	29.3.1989 - 3.3.1990
9.	Shri Rikhi Ram Kaundal	17.8.1990 - 15.12.1992
10.	Shri Kuldip Kumar	17.12.1993 - 18.10.1995
11.	Shri Ishwar Das	31.10.1995 - 23.12.1997
12.	Shri Ram Dass Malanger	20.8.1999 - 28.1.2003
13.	Shri Dharam Pal Thakur	27.3.2003 -

Jammu and Kashmir Legislative Assembly

Speakers

Sl. No.	Name	Period From	To
1.	Shri G.M. Sadiq	President Assembly from 1.11.1951 - 1957	Constituent
2.	Shri G.R. Renzu	March 1954 - 26.7.1957	
3.	Shri Assadullah Mir	27.7.1957 - 25.8.1960	
4.	Shri S. Harbans Singh Azad	29.8.1960 - 3.10.1963	
5.	Shri G.M. Rajpori	21.2.1964 - July 1968	
6.	Shri Kh. Shams-ud-Din	14.9.1968 - 19.3.1972	
7.	Shri A.G. Goni	20.3.1972 - 7.9.1977	
8.	Shri Malik Mohi-ud-Din	8.9.1977 - 7.10.1980	
9.	Shri Babu Parmanand	14.10.1980 - 13.9.1982	
10.	Shri Abdul Rahim Rather	21.9.1982 - 11.6.1983	
11.	Shri Wali Mohd. Itoo	7.7.1983 - 30.7.1984	
12.	Shri Mangat Ram Sharma	31.7.1984 - 29.3.1987	
13.	Shri Mirza Abdul Rashid	31.3.1987 - 30.4.1989	
14.	Ch. Mohd. Aslam	22.8.1989 - 17.10.1996	
15.	Shri Ali Mohd. Naik	18.10.1996 - 16.6.1998	
16.	Shri A.A. Vakil	17.8.1998 - 20.11.2002	
17.	Shri Tara Chand	21.11.2002 -	

Deputy Speakers

Sl. No.	Name	Period	
		From	To
1.	Shri S. Harbans Singh Azad	1956 -	1957
2.	Shri Mohd. Ayub Khan	1957 -	1963
3.	Shri Hem Raj Jandial	1964 -	1967
4.	Master Beli Ram	1967 -	1972
5.	Shri Ali Mohd. Naik	1972 -	1974
6.	Master Beli Ram	1974 -	1977
7.	Shri Janak Raj Gupta	1977 -	1983
8.	Shri Mohd. Dillawar Mir	1983 -	1984
9.	Shri Malik Ghulam-ud-Din	1984 -	1986
10.	Shri Molvi Abdul Rashid	1987 -	1990
11.	Shri Malik Ghulam Hyder	1996 -	2002
12.	Shri M.A. Lone	23.11.2002 -	

Legislative Council

Chairmen

Sl. No.	Name	Period From To
1.	Shri Shiv Narayan Fotedar	27.7.1957- 14.9.1959; 15.9.1959- 14.9.1965; 15.9.1965- 14.9. 1971
2.	Shri Syeed Hussain	16.3.1974- 7.9.1978
3.	Hakim Habib Ullah	16.9.1978 - 21.9.1981; 14.12.1981 - 12.6.1983
4.	Shri Mohan Kishen Tikoo	1.10.1984 - 8.4.1987
5.	Hakim Habib Ullah	10.4.1987 - 31.3.1993; 1.4.1993 - 30.5.1998
6.	Shri Harsajjan Singh Bali	18.8.1998 - 18.2.2000
7.	Shri Abdul Rashid Dar	25.2.2000 - 9.3.2001; 12.3.2001 -

Acting Chairmen/ Deputy Chairmen who performed the duties of the Office of Chairman

Sl. No.	Name	Period From To
1.	Brig. Gansara Singh	25.9.1973 - 15.3.1974
2.	Ch. Lal Mohammed Sabir	23.10.1981 -13.12.1981
3.	Shri Abdul Gani Mastfaridi	9.4.1987 - 10.4.1987

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Peer Gais-Ud-Din	July 1957 - 18.9.1959; 19.9.1959 - October 1963
2.	Ch. Mohammed Shaffi	17.3.1964 - 17.3.1967;
3.	Shri Chuni Lal Sharma	28.3.1967 - 13.8.1967; 22.8.1967 - 25.9.1973
4.	Shri S. Gurmukh Singh	16.3.1974 - 5.3.1980
5.	Shri Ved Prakash	20.3.1980 - 13.3.1981
6.	Shri Ata Ullah Suharwardi	4.4.1981 - 22.10.1981; 14.12.1981 - September 1984
7.	Shri Chuni Lal Sharma	23.8.1989 - 13.2.1990
8.	Shri S.Harsajjan Singh Bali	20.3.1997 - 17.8.1998
9.	Shri Abdul Rashid Dar	19.8.1998 - 24.2.2000
10.	Shri S. Harbans Singh	28.2.2000 - 13.2.2001
11.	Shri Chuni Lal Khajuria	14.2.2001 - 9.3.2003

Jharkhand Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Inder Singh Namdhari	22.11.2000 - 11.8.2004
2.	Shri Mirigendra Pratap Singh	18.8.2004 - 12.1.2005
3.	Shri Inder Singh Namdhari	15.3.2005 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Bagun Sumbrai	24.8.2004 - 29.5.2004
2.	Dr. Saba Ahmad	19.8.2004 - 2.3.2005

Karnataka Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri V. Venkatappa	1949 - 1952
2.	Shri H. Siddaiah	18.6.1952 - 14.5.1954
3.	Shri H. S. Rudrappa	13.10.1954 - 1.11.1956
4.	Shri S.R. Kanti	19.12.1956 - 9.3.1962
5.	Shri Vaikunta Baliga	15.3.1962 - 15.3.1967; 15.3.1967 - 6.6.1968
6.	Shri S.D. Kotavale	5.9.1968 - 24.3.1972
7.	Smt. K.S. Nagarathnamma	24.3.1972 - 17.3.1978
8.	Shri P. Venkataramana	17.3.1978 - 3.10.1980
9.	Shri K.H. Ranganath	30.1.1981 - 24.1.1983
10.	Shri D.B. Chandre Gowda	24.1.1983 - 17.3.1985
11.	Shri B.G. Banakar	18.3.1985 - 17.12.1989
12.	Shri S.M. Krishna	18.12.1989- 20.1.1993
13.	Shri V.S. Kaujalagi	15.2.1993 - 26.12.1994
14.	Shri Ramesh Kumar	27.12.1994 - 24.10.1999
15.	Shri M.V. Venkatappa	26.10.1999 - 6.6.2004
16.	Shri Krishna	10.6.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri R. Chennigaramaiah	1.7.1952 - 1.11.1956
2.	Shri M. Madaiah	24.12.1956 - 31.3.1957
3.	Shri L.H. Thimmabovi	19.7.1957 - 1.3.1962
4.	Shri A.R. Panchagavi	31.3.1962 - 28.2.1967
5.	Shri D. Manjunath	28.3.1967 - 14.4.1971
6.	Shri B.P. Kadam	26.6.1972 - 24.3.1977
7.	Shri G. Puttaswamy	20.6.1977 - 31.12.1977
8.	Smt. Sumati B. Madiman	10.8.1978 - 21.12.1980
9.	Shri Bapurao Anandrao Hulsoorkar	4.2.1981 - 8.1.1983
10.	Shri Veeranna	11.3.1983 - 2.1.1985
11.	Shri Lakshmi Narasimhaiah	8.8.1985 - 26.4.1987
12.	Shri B.R. Yavagal	11.9.1987 - 15.4.1989
13.	Smt. Nagamma Keshavamurthy	30.3.1990 - 20.1.1993
14.	Shri Anjanamurthy	18.3.1993 - 17.12.1994
15.	Shri M.S. Patil	30.12.1994 -6.6.1996
16.	Shri Chandrashekar Malllikarjun Mamani	8.7.1996 - 14.1.1999
17.	Shri Chandrashekar Reddy Deshmukh Madana	11.3.1999 - 22.7.1999
18.	Shri Manohar H. Tahsildar	30.10.1999 - 23.2.2004

Legislative Council

Chairmen

Sl. No.	Name	Period From To
1.	Shri K.T. Bhashyam	17.6.1952 - 24.5.1956
2.	Shri T. Subramanya	25.9.1956 - 1.11.1956; 19.12.1956 - 31.3.1957
3.	Shri P. Seetharamaiah	10.6.1957 - 13.5.1958
4.	Shri V. Venkatappa	5.11.1958 - 13.5.1960
5.	Shri K.C. Narasappa	30.8.1960 - 13.5.1962
6.	Shri G.V. Hallikeri	3.7.1962 - 13.5.1966
7.	Shri S.C. Edke	28.7.1966 - 10.6.1968
8.	Shri K.K. Shetty	6.9.1968 - 18.5.1970
9.	Shri R.B. Naik	26.9.1970 - 26.11.1970
10.	Shri G.V. Hallikeri	20.12.1970 - 15.5.1971
11.	Shri S.D. Goankar	10.4.1972 - 13.5.1974
12.	Shri M.V. Venkatappa	30.8.1974 - 30.6.1978
13.	Shri S. Sivappa	10.8.1978 - 14.5.1980
14.	Smt. Basavarajeshwari	16.6.1980 - 11.6.1982
15.	Shri K. Rahaman Khan	30.6.1982 - 30.6.1984
16.	Shri D. Manjunatha	2.9.1987 - 13.5.1992
17.	Shri D.B. Kalmankar	16.1.1993 - 17.6.1994
18.	Shri D.B. Kalmankar	26.8.1994 - 17.6.2000
19.	Shri B.L. Shankar	6.8.2001- 14.2.2004

Acting Chairmen/Deputy Chairmen who performed the duties of the Office of Chairman

Sl. No.	Name	Period From To
1.	Shri R.S. Mahanta Shetty	10.6.1966 - 20.6.1966
2.	Shri B.R. Naik	16.8.1968 - 5.9.1970
3.	Shri K. Subba Rao	23.9.1970 - 26.9.1970
4.	Shri T.V. Venkataswamy	15.5.1980 - 12.6.1980
5.	Shri Shanthamallappa Patil	11.6.1982 - 30.6.1982
6.	Shri Rambau B. Potdar	1.7.1984 - 26.3.1985
7.	Shri S. Channabasavaiah	26.3.1985 - 8.4.1985
8.	Shri Rambau B. Potdar	8.4.1985 - 26.4.1987
9.	Shri S. Mallikarjunaiah	26.4.1987 - 2.9.1987
10.	Shri B.R. Patil	14.5.1992 - 16.1.1993
11.	Shri B.R. Patil	17.6.1994 - 7.7.1994
12.	Shri David Simeon	17.6.2000 - 6.8.2001
13.	Shri V.R. Sudarshan	15.2.2004 -

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Shri P. Gopalkrishna Shetty	23.7.1952 - 13.5.1956
2.	Shri L. T. Timmabovi	29.9.1956 - 1.11.1956
3.	Shri Mahadevappa Y. Ramapur	26.12.1956 - 31.3.1957
4.	Shri K. Kantappa Shetty	18.6.1957 - 18.5.1958

5.	Shri Keshavarao Nitturkar	19.11.1958 - 30.6.1960
6.	Shri B.J. Deshpande	3.12.1960 - 10.6.1962
7.	Smt. M.R. Lakshmamma	9.7.1962 - 13.5.1964
8.	Shri H.F. Kattimani	2.7.1964 - 13.6.1966
9.	Shri S.D. Gaonvkar	30.7.1966 - 13.5.1968
10.	Shri M. Mandayya	12.9.1968 - 18.5.1970
11.	Shri S.P. Rajanna	15.10.1970 - 30.6.1972
12.	Shri T.N. Narasimhamurthy	5.8.1972 - 4.4.1975;
		29.4.1975 - 11.6.1976
13.	Shri R.G. Jagirdar	17.11.1976 - 14.5.1980
14.	Shri V.S. Krishna Iyer	18.6.1980 - 11.6.1982
15.	Dr. A.B. Malaka Reddy	19.7.1982 - 30.6.1984
16.	Shri S. Mallikarjunaiah	10.4.1985 - 30.6.1990
		12.7.1990 - 2.7.1991
17.	Shri B.R. Patil	5.9.1991 - 7.7.1994
18.	Smt. Rani Satish	29.8.1994 - 13.5.1998
19.	Shri David Simeon	1.4.1999 - 4.12.2002
20.	Shri V.R. Sudarshan	7.8.2003 -

Kerala Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri R. Sankaranarayanan Thampi	27.4.1957 - 31.7.1959
2.	Shri K.M. Seethi Sahib	12.3.1960 - 17.4.1961
3.	Shri C.H. Mohammed Koya	9.6.1961 - 10.11.1961
4.	Shri Alexander Parambithara	13.12.1961 - 10.9.1964
5.	Shri D. Damodaran Potti	15.3.1967 - 21.10.1970
6.	Shri K. Moideenkutty Haji	22.10.1970 - 8.5.1975
7.	Shri T.S. John	17.2.1976 - 25.3.1977
8.	Shri Chakkeeri Ahmed Kutty	28.3.1977 - 14.2.1980
9.	Shri A.P. Kurian	15.2.1980 - 1.2.1982
10.	Shri A.C. Jose	3.2.1982 - 23.6.1982
11.	Shri Vakkom B. Purushothaman	24.6.1982 - 28.12.1984
12.	Shri V.M. Sudheeran	8.3.1985 - 27.3.1987
13.	Shri Varkala Radhakrishnan	30.3.1987 - 28.6.1991
14.	Shri P.P. Thankachan	1.7.1991 - 3.5.1995
15.	Shri Therambil Ramakrishnan	27.6.1995 - 28.5.1996
16.	Shri M. Vijayakumar	30.5.1996 - 4.6.2001
17.	Shri Vakkom Purushothaman	6.6.2001 - 4.9.2004
18.	Shri Therambil Ramakrishnan	16.9.2004 -

Acting Speakers/ Deputy Speakers who performed the duties of the Office of Speaker

Sl. No.	Name	Period From To
1.	Smt. A. Nabisath Beevi	18.4.1961 - 8.6.1961
2.	Shri R.S. Unni	9.5.1975 - 16.2.1976
3.	Shri K.M. Hamza Kunju	29.12.1984 - 7.3.1985
4.	Shri K. Narayan Kurup	4.5.1995 - 26.6.1995
5.	Shri N. Sundaran Nadar	5.9.2004 - 15.9.2004

Deputy Speakers

Sl. No.	Name	Period From To
1.	Smt. K.O. Aysha Bai	6.5.1957 - 31.7.1959
2.	Smt. A. Nabisath Beevi	15.3.1960 - 10.9.1964
3.	Shri M.P. Mohammed Jafferkhan	20.3.1967 - 26.6.1970
4.	Shri R.S. Unni	30.10.1970 - 22.3.1977
5.	Shri P.K. Gopalakrishnan	6.7.1977 - 23.10.1979
6.	Shri M.J. Zakaria	21.2.1980 - 1.2.1982
7.	Shri K.M. Hamsakunju	30.6.1982 - 7.10.1986
8.	Shri Korambayil Ahmmed Haji	20.10.1986 - 25.3.1987
9.	Smt. Bhargavi Thankappan	2.4.1987 - 5.4.1991
10.	Shri K. Narayana Kurup	19.7.1991 - 14.5.1996
11.	Shri C.A. Kurian	17.7.1996 - 16.5.2001
12.	Shri N. Sundaran Nadar	4.7.2001 -

Madhya Pradesh Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Pandit Kunjilal Dubey	1.11.1956 - 17.12.1956; 18.12.1956 - 1.7.1957; 2.7.1957 - 26.3.1962; 27.3.1962 - 7.3.1967
2.	Shri Kashiprasad Pandey	24.3.1967 - 24.3.1972
3.	Shri Tejlal Tembhare	25.3.1972 - 10.8.1972
4.	Shri Gulsher Ahmed	14.8.1972 - 14.7.1977
5.	Shri Mukund Sakharam Nevalkar	15.7.1977 - 2.7.1980
6.	Shri Yagyadatta Sharma	3.7.1980 - 19.7.1983
7.	Shri Ramkishor Shukla	5.3.1984 - 13.3.1985
8.	Shri Rajendra Prasad Shukla	25.3.1985 - 19.3.1990
9.	Shri Brijmohan Mishra	20.3.1990 - 22.12.1993
10.	Shri Shrinivas Tiwari	24.12.1993 - 1.2.1999
11.	Shri Shrinivas Tiwari	2.2.1999 - 11.12.2003
12.	Shri Ishwardas Rohani	16.12.2003 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Vishnu Vinayak Sarvate	24.12.1956 - 5.3.1957
2.	Shri Anant S. Patvardhan	3.12.1957 - 7.3.1962
3.	Shri Narbada P. Shrivastav	4.7.1962 - 28.2.1967
4.	Shri Ramkishor Shukla	26.3.1968 - 16.3.1972
5.	Shri Narayan P. Shukla	28.7.1972 - 7.1.1976
6.	Shri Savaimal Jain	10.3.1976 - 30.4.1977
7.	Shri R. Maheshvari	1.9.1978 -17.2.1980
8.	Shri Ramkishore Shukla	16.9.1980 - 3.3.1984
9.	Shri Pyarelal Kanwar	6.4.1984 - 10.3.1985
10.	Shri Kanhaiyalal Yadav	12.3.1986 - 3.3.1990
11.	Shriyut Shriniwas Tiwari	23.3.1990 - 15.12.1992
12.	Shri Bherulal Patidar	28.12.1993 - 1.12.1998
13.	Shri Ishwardas Rohani	11.2.1999 - 5.12.2003
14.	Shri Hajarilal Raghuvanshi	18.12.2003 -

Maharashtra Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Kundanmal Sabhachand Firodia	21.5.1946 - 31.1.1952
2.	Shri Dattatraya Kashinath Kunte	5.5.1952 - 31.10.1956
3.	Shri Sayaji Lakshman Silam	21.11.1956 - 12.3.1962
4.	Shri Trymbak Shivram Bharade	17.3.1962 - 13.3.1967; 15.3.1967 - 15.3.1972
5.	Shri Sheshrao Krishnarao Wankhede	22.3.1972 - 20.4.1977
6.	Shri Daulatrao *alias* Balasaheb Shripatrao Desai	4.7.1977 - 13.3.1978
7.	Shri Shivraj Vishwanath Patil	17.3.1978 - 6.12.1979
8.	Shri Pranlal Harkishandas Vora	1.2.1980 - 29.6.1980
9.	Shri Sharad Shankar Dhige	2.7.1980 - 11.1.1985
10.	Shri Shankarrao Chimaji Jagtap	20.3.1985 - 20.3.1990
11.	Shri Madhukar Dhanaji Chaudhari	21.3.1990 - 22.3.1995
12.	Shri Dattaji Shankar Nalawade	24.3.1995 - 19.10.1999
13.	Shri Arunlal Govardhandas Gujarathi	22.10.1999 - 4.11.2004
14.	Krishnarao Rakhamajirao Desai *alias* Babasaheb Kupekar	6.11.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Shanmukhappa Ningappa Angadi	21.5.1946 - 17.4.1952
2.	Shri Shivlingappa Rudrappa Kanthi	5.5.1952 - 31.10.1956
3.	Shri Sheshrao Krishnarao Wankhede	23.11.1956 - 5.4.1957
4.	Shri Deendayal Gupta	20.6.1957 - 30.4.1960; 1.5.1960 - 3.3.1962
5.	Shri Krishnarao Tukaram Girme	20.3.1962 - 1.3.1967; 16.3.1967 - 13.3.1972
6.	Shri Ramkrishna Vyankatesh Bet	23.3.1972 - 26.2.1976
7.	Shri Sayyad Farook Pasha Sayyad Makdum Pasha	12.3.1976 - 20.4.1977
8.	Shri Shivraj Vishwanath Patil	5.7.1977 - 2.3.1978
9.	Shri Gajanan Raghunath Garud	21.3.1978 - 5.4.1979
10.	Shri Suryakant Jagobaji Dongare	7.4.1979 - 9.6.1980
11.	Shri Shankarrao Chimaji Jagtap	3.7.1980 - 8.3.1985
12.	Shri Kamalkishor Nanasaheb Kadam	21.3.1985 - 22.6.1986
13.	Dr. Padmasingh Bajirao Patil	24.6.1986 - 25.6.1988
14.	Shri Babanrao Dadaba Dhakne	30.7.1988 - 9.12.1989
15.	Shri Laxman Sonopant Joshi *alias* Anna Joshi	20.12.1990 - 3.7.1991
16.	Shri Moreshwar Vitthalrao Temurde	19.7.1991 - 11.3.1995

17.	**Shri Sharad Motiram Tasare**	**28.3. 1995 - 15.7.1999**
18.	**Shri Pramod Bhauraoji Shende**	**23.12.1999 -17.10. 2004;** **9.12.2004 -**

Legislative Council

Chairmen

Sl. No.	Name	Period From To
1.	Shri Mangal Mancharam Pakvasa	22.7.1937 - 16.8.1947
2.	Shri Ramchandra Ganesh Soman	18.10.1947 - 5.5.1952
3.	Shri Ramrao Shriniwasrao Hukkerikar	5.5.1952 - 20.11.1956
4.	Shri Bhogilal Dhirajlal Lala	21.11.1956 - 10.7.1960
5.	Shri Vitthal Sakharam Page	11.7.1960 - 24.4.1978
6.	Shri Ramkrishna Suryabhan Gavai	15.6.1978 - 22.9.1982
7.	Shri Jayant Shridhar Tilak	23.9.1982 - 7.7.1998
8.	Prof. Narayan Sadashiv Pharande	24.7.1998 - 7.7.2004
9.	Shri Shivajirao Bapusaheb Deshmukh	13.8.2004 -

Acting Chairman/Deputy Chairman who performed the duties of the Office of Chairman

Sl. No.	Name	Period From To
1.	Shri Ram Meghe	13.6.1978 - 15.6.1978

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Shri Ramchandra Ganesh Soman	22.7.1937 - 16.10.1947
2.	Shri Shantilal Harijivan Shah	18.10.1947 - 4.5.1952
3.	Shri V.G. Limaye	5.5.1952 - 18.8.1955
4.	Kumari Jethi T. Sipahimalani	19.8.1955 - 24.4.1962
5.	Shri Vishnuprasad Nandarai Desai	21.6.1962 - 28.7.1968
6.	Shri Ramkrishna Suryabhan Gavai	30.7.1968 - 12.6.1978
7.	Shri Arjun Giridhar Pawar	1.12.1978 - 24.4.1984
8.	Shri Dajiba Parvat Patil	12.7.1984 - 7.7.1986
9.	Shri Siruabhan Raghunath Vahadane	29.7.1988 - 27.7.1994
10.	Prof. Narayan Sadashiv Pharande	30.7.1994 - 23.7.1998
11.	Shri Vasant Shankar Davkhare	24.7.1998 - 11.5.2004; 13.8.2004 -

Manipur Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri T.C. Tiankham	19.11.1948 - 15.10.1949
2.	Shri Kh. Ibetombi Singh	23.7.1963 - 20.3.1967
3.	Shri S. Tombi Singh	21.3.1967 - 24.10.1967
4.	Shri Sibo Lorho	5.3.1968 - 29.3.1972
5.	Dr. L. Chandramani Singh	30.3.1972 - 8.3.1974
6.	Shri R.K. Dorendra Singh	26.3.1974 - 5.12.1974
7.	Md. Alimuddin	16.12.1974 - 4.9.1975
8.	Dr. L. Chandramani Singh	18.9.1975 - 21.10.1978
9.	Shri R.K. Ranbir Singh	12.1.1979 - 18.2.1980
10.	Shri Y. Yaima Singh	18.2.1980 - 23.1.1985
11.	Shri W. Angou Singh	24.1.1985 - 2.11.1988
12.	Shri Th. Devendra Singh	20.12.1988 - 2.3.1990
13.	Dr. H. Borobabu Singh	2.3.1990 - 9.1.1995
14.	Shri E. Biramani Singh	9.1.1995 - 27.2.1995
15.	Shri W. Nipamacha Singh	22.3.1995 - 6.12.1997
16.	Shri K. Babudhon Singh	29.12.1997 - 7.3.2000
17.	Dr. S. Dhananjoy	13.3.2000 - 8.3.2002
18.	Shri T.N. Haokip	12.3.2003 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri T. Bokul Singh	19.11.1948 - 15.10.1949
2.	Shri Solomon	16.8.1963 - 12.11.1965
3.	Md. Alimuddin	10.12.1965 - 12.1.1967
4.	Shri Kh. Chaoba	3.4.1967 - 24.10.1967
5.	Shri L. Ibomcha Singh	3.4.1968 - 20.10.1967
6.	Shri Atomba Ngairangbamcha	25.5.1972 - 26.3.1973
7.	Shri Th. Chaoba Singh	19.4.1974 - 30.7.1974
8.	Shri N. Paoheu	16.8.1974 - 10.3.1975
9.	Shri Ngurdinglien	8.4.1975 - 16.7.1977
10.	Shri O. Joy Singh	26.10.1977 - 14.11.1979
11.	Shri H. Lokhon Singh	17.3.1980 - 14.12.1980
12.	Shri W. Angou Singh	6.7.1981 - 4.1.1985
13.	Shri H. Sanayaima Singh	19.2.1985 - 18.2.1990
14.	Shri M. Manihar Singh	21.3.1990 - 24.7.1990
15.	Shri N. Mangi Singh	25.9.1990 - 25.2.1995
16.	Shri I. Hemochandra Singh	25.3.1995 - 28.3.1995
17.	Shri K. Babudhon Singh	26.9.1995 - 27.12.1997
18.	Shri Ksh. Biren Singh	12.1.1998 - 7.4.1998
19.	Shri T. Thangzalam Haokip	3.7.1998 - 1.3.2000
20.	Shri K. Raina	6.4.2000 - 23.2.2001
21.	Shri Z. Mangaibou Singh	23.3.2001 - 5.5.2001
22.	Shri K. Ranjit Singh	21.3.2002 - 22.3.2002
23.	Shri Lairellakpam Lala	10.7.2002 - 7.7.2004

Meghalaya Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Prof. R.S. Lyngdoh	14.4.1970 - 25.3.1972
		25.3.1972 - 1978
2.	Shri W. Syiemiong	20.3.1978 - 1983
3.	Shri E.K. Mawlong	9.3.1983 - 12.12.1988
4.	Shri P.G. Marbaniang	24.2.1988 - 15.12.1989
5.	Shri P.R. Kyndiah	20.12.1989 - 1993
6.	Dr. R.C. Laloo	4.3.1993 - 15.6.1993
7.	Shri J.D. Rymbai	12.10.1993 - 17.4.1997
8.	Shri Monindra Rava	22.7.1997 - 6.3.1998
9.	Shri E.K. Mawlong	10.3.1998 - 8.3.2000
10.	Shri E.D. Marak	30.7.2000 - 2.3.2003
11.	Shri M.M. Danggo	12.3.2003 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Grohonsingh Marak	21.4.1970 - 1972
2.	Shri Singjan Sangma	5.4.1972 - 1978
3.	Shri B.G. Momin	28.3.1978 - June 1979
4.	Shri Singjan Sangma	20.6.1979 - 2.4.1980

5.	Smt. M.D. Shira	8.4.1980 - 1983
6.	Shri Ira Marak	15.3.1983 - 1988
7.	Shri J.D. Rymbai	22.3.1988 - 22.6.1990
8.	Shri P.D. Sangma	6.12.1990 - 1991
9.	Shri Nimarson Momin	20.3.1992 - 1993
10.	Shri Monindra Rava	29.4.1993 - 22.7.1997
11.	Shri H.S. Shylla	23.7.1997 - 1998
12.	Shri R.L. Tariang	25.6.1998 - 24.6.1999
13.	Shri Martin Danggo	3.8.1999 - 7.12.2001
14.	Shri P.W. Muktieh	23.6.2004 -

Mizoram Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri H. Thansanga	10.5.1972 - 17.10.1975
2.	Shri Vaivenga	7.11.1975 - 20.6.1978
3.	Shri Thangridema	21.6.1978 - 24.5.1979
4.	Dr. Kenneth Chawngliana	25.5.1979 - 8.5.1984
5.	Dr. H. Thansanga	9.5.1984 - 9.3.1987
6.	Shri J. Thanghuama	10.3.1987 - 29.1.1989
7.	Shri Hiphei	30.1.1989 - 14.7.1990
8.	Shri Rokamlova	17.7.1990 - 9.12.1993
9.	Shri Vaivenga	10.12.1993 - 7.12.1998
10.	Shri R. Lalawia	8.12.1998 - 14.12.2003
11.	Shri Lalchamliana	7.7.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Hiphei	12.5.1972 - 10.5.1977
2.	Shri C. Chawngkunga	21.6.1978 - 10.11.1978; 25.5.1979 - 28.11.1983
3.	Shri Biakchhunga	5.12.1983 - 4.5.1984

4.	Shri K. Sangchhum	9.5.1984 - 19.2.1987
5.	Shri K. Thanfianga	10.3.1987 - 7.9.1988
6.	Shri Vanlaingena	30.1.1989 - 26.7.1991
7.	Shri P. Lalbiaka	7.10.1991 - 7.12.1993
8.	Shri R. L. Valla	14.3.1995 - 3.4.1998
9.	Shri L.P. Thangzika	27.5.1998 - 2.12.1998
10.	Shri Vanlalhlana	10.12.1998 - 25.3.2000
11.	Shri Lalthan Kunga	10.10.2000 - 5.12.2003
12.	Shri C. Lalrinsanga	7.7.2004 -

Nagaland Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri T.N. Angami	22.9.1961 - 30.11.1963; 11.2.1964 - 13.8.1966
2.	Shri K. Shikhu	4.10.1966 - 6.3.1969; 7.3.1969 - 6.3.1974
3.	Shri K.V. Keditsu	7.3.1974 - 28.11.1977
4.	Shri Vitsonei K. Angami	29.11.1977 - 28.11.1982
5.	Shri Chongshen C.	29.11.1982 - 12.10.1984
6.	Shri E.T. Ezung	25.2.1985 - 29.10.1986
7.	Shri Chenlom Phom	12.3.1987 - 6.12.1987
8.	Shri Chongshen C.	7.12.1987 - 25.1.1989
9.	Shri T.N. Ngullie	14.2.1989 - 20.6.1990
10.	Shri Thenucho	19.7.1990 - 9.3.1993
11.	Shri Neiba Ndang	18.3.1993 - 4.3.1998
12.	Shri Z. Lohe	23.3.1998 - 5.3.2003
13.	Shri Kiyanilie	14.3.2003 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri K. Shikhu	5.3.1964 - 4.10.1966
2.	Shri Riga Thong	8.10.1966 - 16.2.1969
3.	Shri K.V. Keditsu	10.3.1969 - 20.3.1972
4.	Shri T.A. Ngullie	27.3.1972 - 24.2.1974
5.	Shri Hentok Konyak	28.3.1974 -8.3.1975
6.	Shri Rokonicha	17.3.1975 - 18.3.1975
7.	Shri Rainbow Ezung	18.3.1978 - 21.6.1980
8.	Shri Horangse	26.6.1980 - 16.11.1982
9.	Shri E.T. Ezung	24.3.1983 - 24.2.1985
10.	Shri Chenlom	12.12.1985 - 12.3.1987
11.	Shri A. Nyamnyei	19.3.1988 - 30.7.1988
12.	Shri Chubatemjen	23.6.1989 - 19.4.1990
13.	Shri H. Chuba Chang	12.7.1993 - 19.2.1995
14.	Shri W. Wangyuh Konyak	22.3.1996 - 4.3.1998
15.	Shri Joshua Sumi	23.7.1998 - 6.3.2003
16.	Shri E.E. Pangteang	24.6.2004 -

Orissa Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Mukunda Prasad Das	28.7.1937 - 29.5.1946
2.	Shri Lal Mohan Patnaik	29.5.1946 - 6.3.1952
3.	Shri Nanda Kishore Das	6.3.1952 - 27.5.1957
4.	Pandit Nilakanth Das	27.5.1957 - 1.7.1961
5.	Shri Lingaraj Panigrahi	1.7.1961 - 18.3.1967
6.	Shri Nanda Kishore Misra	18.3.1967 - 12.4.1971
7.	Shri Nanda Kishore Misra	12.4.1971 - 21.3.1974
8.	Shri Braja Mohan Mohanty	21.3.1974 - 1.7.1977
9.	Shri Satyapriya Mohanty	1.7.1977 - 12.6.1980
10.	Shri Somnath Rath	12.6.1980 - 11.2.1984
11.	Shri Prasanna Kumar Dash	22.2.1984 - 14.2.1985
12.	Shri Prasanna Kumar Dash	14.2.1985 - 9.3.1990
13.	Shri Yudhisthir Das	9.3.1990 - 22.3.1995
14.	Shri Kishore Chandra Patel	22.3.1995 - 14.1.1996
15.	Shri Chintamani Dyan Samantra	16.2.1996 - 10.3.2000
16.	Shri Sarat Kumar Kar	10.3.2000 - 21.5.2004
17.	Shri Maheswar Mohanty	21.5.2004 -

Deputy Speakers

Sl. No.	Name	Period	
		From	To
1.	Shri Nanda Kishore Das	28.7.1937 -	14.9.1945
2.	Shri A. Laxmibai	29.5.1946 -	20.2.1952
3.	Maulabi Mahammed Hanif	8.3.1952 -	4.3.1957
4.	Shri Jadumani Mangaraj	29.5.1957 -	25.2.1961
5.	Shri Loknath Mishra	28.8.1961 -	1.3.1967
6.	Shri Harihar Bahinipati	29.3.1967 -	23.1.1971
7.	Shri Narayan Birabar Samanta	6.5.1971 -	3.3.1973
8.	Shri Chintamani Jena	29.3.1974 -	30.4.1977
9.	Shri Surendranath Naik	27.7.1977 -	17.2.1980
10.	Shri Himansu Sekhar Padhi	2.7.1980 -	9.3.1985
11.	Shri Chintamani Dyan Samantra	18.3.1985 -	3.3.1990
12.	Shri Prahlad Dora	22.3.1990 -	15.3.1995
13.	Shri Chintamani Dyan Samantra	28.3.1995 -	12.2.1996
14.	Shri B.B. Singh Mardaraj	15.3.1996 -	29.2.2000
15.	Shri Rama Chandra Panda	27.3.2000 -	6.2.2004
16.	Shri Prahlad Dora	3.7.2004 -	

Punjab Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri S. Kapur Singh	1.11.1947 - 20.6.1951
2.	Dr. Satya Pal	5.5.1952 - 18.4.1954
3.	Shri S. Gurdial Singh Dhillion	18.5.1954 - 13.3.1962
4.	Shri Parbodh Chandra	14.3.1962 - 18.3.1964
5.	Justice (Retd.) Harbans Lal	25.3.1964 - 19.3.1967
6.	Lt. Col. (Retd.) Joginder Singh Mann	21.3.1967 - 13.3.1969
7.	Shri S. Darbara Singh	14.3.1969 - 3.9. 1973
8.	Dr. Kewal Krishan	25.9.1973 - 30.3.1977
9.	Shri S. Ravi Inder Singh	1.7.1977 - 27.6.1980
10.	Shri Brij Bhushan Mehra	1.7.1980 - 13.10.1985
11.	Shri S. Ravi Inder Singh	15.10.1985 - 27.5.1986
12.	Shri S. Surjit Singh Minhas	2.6.1986 - 15.3.1992
13.	Shri S. Harcharan Singh Ajnala	17.3.1992 - 9.6.1993
14.	Shri Harnam Das Johar	21.7.1993 - 23.11.1996
15.	Shri S. Dilbagh Singh Daleke	23.12.1996 - 2.3.1997
16.	Shri S. Charnjit Singh Atwal	4.3.1997 - 20.3.2002
17.	Dr. Kewal Krishan	21.3.2002 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Thakur Panchan Chand	3.11.1947 - 20.3.1951
2.	Smt. Shanno Devi	26.3.1951 - 20.6.1951
3.	Shri S. Gurdial Singh Dhillion	10.5.1952 - 17.5.1954
4.	Ch. Swaroop Singh	19.5.1954 - 28.2.1962
5.	Smt. Shanno Devi	19.3.1962 - 31.10.1966
6.	Dr. Jagjit Singh	27.3.1967 - 23.8.1968
7.	Brig. (Retd.) Bikramjit Singh	20.3.1969 - 24.4.1970
	Bajwa	28.7.1970 - 13.10.1971
8.	Dr. Kewal Krishan	28.3.1972 - 25.9. 1973
9.	Shri S. Nasib Singh Gill	28.9.1973 - 30.4.1977
10.	Shri Panna Lal Nayyar	8.7.1977 - 17.2.1980
11.	Shri S. Gulzar Singh	8.7.1980 - 26.6.1985
12.	Shri S. Nirmal Singh Kahlon	5.11.1985 - 6.5.1986
13.	Shri S. Jaswant Singh	2.6.1986 - 5.3.1988
14.	Shri Romesh Chander Dogra	7.4.1992 - 7.1.1994
15.	Shri Naresh Thakur	28.2.1996 - 11.2.1997
16.	Ch. Swarna Ram	18.6.1997 - 26.7.1997
17.	Dr. Baldev Raj Chawla	23.12.1997 - 31.12.1999
18.	Shri Satpal Gosain	5.9.2000 - 24.2.2002
19.	Prof. Darbari Lal	26.6.2002 - 10.3.2003
20.	Shri S. Bir Devinder Singh	27.3.2003 - 9.7.2004
21.	Prof. Darbari Lal	12.7.2004 -

Rajasthan Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Narottam Lal Joshi	31.3.1952 - 25.4.1957
2.	Shri Ram Niwas Mirdha	25.4.1957 - 3.5.1967
3.	Shri Niranjan Nath Acharya	3.5.1967 - 20.3.1972
4.	Shri Ram Kishore Vyas	20.3.1972 - 18.7.1977
5.	Shri Laxman Singh	18.7.1977 - 21.6.1979
6.	Shri Gopal Singh	25.9.1979 - 4.7.1980
7.	Shri Poonam Chand Vishnoi	7.7.1980 - 19.3.1985
8.	Shri Heera Lal Devpura	20.3.1985 - 16.10.1985
9.	Shri Giriraj Prasad Tiwari	31.1.1986 - 15.3.1990
10.	Shri Hari Shankar Bhabhra	16.3.1990 - 28.12.1993; 30.12.1993 - 5.10.1994
11.	Shri Shanti Lal Chaplot	7.4.1995 - 18.3.1998
12.	Shri Samrath Lal Meena	24.7.1998 - 4.1.1999
13.	Shri Parasram Maderna	6.1.1999 - 15.1.2004
14.	Smt. Sumitra Singh	16.1.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Lal Singh Shaktawat	31.3.1952 - 31.3.1957
2.	Shri Niranjan Nath Acharya	1.5.1957 - 1.3.1962
3.	Shri Narayan Singh Masuda	7.5.1962 - 28.2.1967
4.	Shri Poonam Chand Vishnoi	9.5.1967 - 9.7.1971
5.	Shri Ramnarayan Choudhary	11.11.1971 - 15.3.1972
6.	Shri Ram Singh Yadav	25.3.1972 - 30.4.1977
7.	Shri Ramchandra	8.9.1977 - 17.2.1980
8.	Shri Ahmed Baksh Sindhi	28.3.1981 - 15.10.1982
9.	Shri Giriraj Prasad Tiwari	29.3.1985 - 31.1.1986
10.	Shri Kishan Motwani	28.10.1986 - 1.3.1990
11.	Shri Yadunath Singh	5.7.1990 - 21.3.1991
12.	Shri Hirasingh Chauhan	25.3.1991 - 15.12.1992
13.	Shri Shantilal Chaplot	27.9.1994 - 6.4.1995
14.	Shri Samrath Lal Meena	4.5.1995 - 24.7.1998
15.	Smt. Tara Bhandari	28.7.1998 - 30.11.1998
16.	Shri Devendra Singh	26.3.1999 - 5.12.2003
17.	Shri Ram Narayan Vishnoi	19.7.2004 -

Sikkim Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri C.S. Roy	5.9.1975 - 23.9.1977
2.	Shri B.B. Gooroong	11.10.1977 - October 1979
3.	Shri Sonam Tshering	20.10.1979 - March 1985
4.	Shri Tulsi Ram Sharma	19.3. 1985 - December 1989
5.	Shri Dorjee Tshering Bhutia	15.12.1989 - December 1994
6.	Shri Chakra Bahadur Subba	29.12.1994 - October 1999
7.	Smt. Kalawati Subba	15.12.1999 - 11.2.2004
8.	Shri D.N. Thakarpa	2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri R.C. Poudyal	1975 -1977
2.	Shri Kalzang Gyatso	1977 - 1979
3.	Shri Lal Bahadur Basnet	1979 - 1984
4.	Shri Ram Lepcha	1985 - 1989
5.	Shri Bedu Singh Pant	1989 - 1994
6.	Shri Dal Bahadur Gurung	1994 - 1999
7.	Shri Palden Lachungpa	15.10.1999 - 11.2.2004
8.	Shri Mimgma Tshering Sherpa	2004 -

Tamil Nadu Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri J. Sivashanmugam Pillai	6.5.1952 - 16.8.1955
2.	Shri N. Gopala Menon	27.9.1955 - 1.11.1956
3.	Dr. U. Krishna Rao	30.4.1957 - 3.8.1961
4.	Shri S. Chella Pandian	31.3.1962 - 4.3.1967
5.	Shri Si. Pa. Aditanar	17.3.1967 - 12.8.1968
6.	Shri Pulavar K. Govindan	22.2.1969 - 14.3.1971
7.	Shri K.A. Mathialagan	24.3.1971 - 2.12.1972
8.	Shri Pulavar K. Govindan	3.8.1973 - 3.7.1977
9.	Shri Munu Adi	6.7.1977 - 18.6.1980
10.	Shri K. Rajaram	21.6.1980 - 24.2.1985
11.	Shri P.H. Pandain	27.2.1985 - 5.2.1989
12.	Dr. M. Tamilkudimagan	8.2.1989 - 30.6.1991
13.	Shri R. Muthiah	3.7.1991 - 21.5.1996
14.	Shri P.T.R. Palanivel Rajan	23.5.1996 - 21.5.2001
15.	Dr. K. Kalimuthu	24.5.2001 -

Acting Speakers/ Deputy Speakers who performed the duties of the Office of Speaker

Sl. No.	Name	Period From To
1.	Shri B. Baktavatsalu Naidu	16.8.1955 - 27.9.1955; 1.11.1956-31.3.1957; 4.8.1961 - 31.3.1962
2.	Shri P. Sreenivasan	2.12.1972 - 3.8.1973

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri B. Baktavatsalu Naidu	6.5.1952 - 31.3.1962
2.	Shri K. Parthasarathy	31.3.1962 - 28.2.1967
3.	Shri K. Govindan	17.3.1967 - 21.2.1969
4.	Shri G.R.Edmund	26.2.1969 - 5.1.1971
5.	Shri P.Seenivasan	24.3.1971 - 9.3.1974
6.	Shri N.Ganapathy	17.4.1974 - 31.1.1976
7.	Shri S.Thirunavukkarasu	6.7.1977 - 17.2. 1980
8.	Shri P.H.Pandian	21.6.1980 - 15.11.1984
9.	Shri V.P.Balasubramaniun	27.2.1985 - 30.1.1988
10.	Shri V.P. Duraisamy	8.2.1989 - 30.1.1991
11.	Prof. K. Ponnusamy	3.7.1991 - 16.5.1993
12.	Shri S. Gandhirajan	27.10.1993 - 13.5.1996
13.	Shri Parithi Ellamvazhuthi	23.5.1996 - 14.5.2001
14.	Shri A. Arunachalam	24.5.2001 -

Tripura Legislative Assembly

Speakers

Sl. No.	Name	Period From	To
1.	Shri Upendra Kumar Roy	1.7.1963	11.1.1967
2.	Shri Manindra Lal Bhowmik	14.3.1967	20.1.1972; 29.3.1972 - 23.1.1978
3.	Shri Sudhanwa Debbarma	24.1.1978	6.1.1983
4.	Shri Amarendra Sarma	9.2.1983	4.2.1988
5.	Shri Jotirmay Nath	29.2.1988	7.4.1993
6.	Shri Bimal Singha	14.5.1993	22.9.1995
7.	Shri Jitendra Sarkar	12.10.1995	10.3.1998; 23.3.1998 - 7.3.2003
8.	Shri Ramendra Chandra Debnath	20.3.2003	-

Deputy Speakers

Sl. No.	Deputy Speaker	Period From	To
1.	Shri Md. Ersad Ali Choudhury	1.7.1963	11.1.1967
2.	Shri Monoranjan Nath	21.3.1967	1.11.1971
3.	Shri Usha Ranjan Sen	29.3.1972	4.11.1977
4.	Shri Jyotirmay Das	27.1.1978	6.1.1983
5.	Shri Bimal Singha	11.2.1983	4.2.1988
6.	Shri Rotimahan Jamatia	14.3.1988	16.5.1992

7.	Shri Gouri Sankar Reang	17.9.1992 - 28.2.1993
8.	Shri Niranjan Debbarma	17.5.1993 - 8.10.1995
9.	Shri Sunil Kumar Choudhury	12.10.1995 - 10.3.1998
10.	Shri Subal Rudra	26.3.1998 - 28.2.2003; 25.3.2003 -

Uttar Pradesh Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Purushottam Das Tandon	31.7.1937 - 10.8.1950
2.	Shri Nafisul Hasan	21.12.1950 - 19.5.1952
3.	Shri Atmaram Govind Kher	20.5.1952 - 10.4.1957; 10.4.1957 - 25.3.1962
4.	Shri Madan Mohan Varma	26.3.1962- 16.3.1967
5.	Shri Jagdish Saran Agarwal	17.3.1967 - 16.3.1969
6.	Shri Atmaram Govind Kher	17.3.1969 - 18.3.1974
7.	Shri Vasudev Singh	18.3.1974 - 12.7.1977
8.	Shri Banarasi Das	12.7.1977 - 26.2.1979
9.	Shri Shripati Mishra	7.7.1980 -18.7.1982
10.	Shri Dharam Singh	25.8.1982 - 15.3.1985
11.	Shri Niyaz Hasan	15.3.1985 - 8.1.1990
12.	Shri Harikrishan	9.1.1990 - 30.7.1991
13.	Shri Keshari Nath Tripathy	30.7.1991 - 15.12.1993
14.	Shri Dhaniram Verma	15.12.1993 - 20.6.1995
15.	Shri Barkhuram Verma	18.7.1995 - 26.3.1997
16.	Shri Keshari Nath Tripathy	27.3.1997 - 14.5.2002; 14.5.2002 - 19.5.2004
17.	Shri Viqar Ahmed Shah	19.5.2004 - 26.7.2004
18.	Shri Mata Prasad Pandey	26.7.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Nafisul Hasan	29.7.1946 - 21.12.1950
2.	Shri Hargovind Pant	2.1.1951 - 9.4.1957
3.	Shri Ramnarayan Tripathi	27.4.1957 - 6.3.1962
4.	Shri Hotilal Agrawal	16.4.1962 - 14.2.1967
5.	Shri Shripati Mishra	16.6.1967 - 15.4.1968
6.	Shri Vasudev Singh	25.3.1969 - 4.3.1974
7.	Shri Shivnath Singh Kushwaha	21.2.1975 - 30.4.1977
8.	Shri Jagannath Prasad	13.5.1978 - 17.2.1980
9.	Shri Yadvendra Singh	5.9.1980 - 14.12.1982
10.	Shri Hukum Singh	14.9.1984 - 10.3.1985
11.	Shri Trilok Chandra	5.9.1985 - 29.11.1989
12.	Shri Surendra Singh Chouhan	7.3.1990 - 4.4.1991
13.	Shri Ram Asrey Varma	28.2.1992 - 6.12.1992
14.	Dr. Ammar Rizvi	28.9.2001 - 20.1.2002
15.	Dr. Viqar Ahmed Shah	14.11.2003 - 26.7.2004
16.	Shri Rajesh Agrawal	30.7.2004 -

Legislative Council

Chairmen

Sl. No.	Name	Period From To
1.	Shri Chandrabhal	26.1.1950 - 5.5.1958
2.	Shri Raghunath Vinayak Dhulekar	20.7.1958 - 5.5.1964
3.	Shri Darbari Lal Sharma	5.8.1964 - 5.5.1968
4.	Shri Virendra Swarup	15.3.1969 - 5.5.1974
		11.6.1974 - 26.2.1980
5.	Shri Virendra Bahadur Singh	6.10.1980 - 5.5.1982
	Chandel	3.3.1983 - 5.3.1988
6.	Shri Jagdish Chandra Dixit	6.4.1989 - 7.3.1990
7.	Shri Shiv Prasad Gupta	5.7.1990 - 6.7.1992
8.	Shri Nityanand Swami	24.4.1997 - 8.11.2000
9.	Chaudhary Sukhram Singh Yadav	3.8.2004-

Acting Chairmen/Deputy Chairmen who performed the duties of the Office of Chairman

Sl. No.	Name	Period From To
1.	Shri Nizamuddin	6.5.1958 - 19.7.1958
2.	Shri Virendra Swarup	2.3.1969 - 14.3.1969
3.	Shri Shiv Prasad Gupta	6.5.1982 - 2.3.1983
4.	Shri Nityanand Swami	7.7.1992 - 9.5.1996

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Shri Alhuj Sheikh Masood Ujjama	18.1.1947 - 27.9.1948
2.	Shri Chandrabhal	5.11.1948 - 9.3.1949
3.	Shri Akhtar Hussain	2.2.1950 - 20.3.1952
4.	Shri Nizamuddin	27.5.1952 - 5.5.1958; 20.7.1958 - 5.5.1964
5.	Shri Virendra Swaroop	16.2.1965 - 1.3.1969
6.	Shri Kunwar Devendra Pratap Singh	13.8.1969 - 5.5.1972; 11.5.1972 - 5.5.1978
7.	Shri Shiva Prasad Gupta	6.10.1980 - 5.5.1982; 3.3.1983 - 5.5.1984
8.	Shri Nityanand Swamy	13.8.1991 - 6.7.1992
9.	Kunwar Manvender Singh	6.8.2004 -

Uttaranchal Legislative Assembly

Speakers

Sl. No.	Name	Period	
		From	To
1.	Shri Yashpal Arya	15.3.2002	-

West Bengal Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Saila Kumar Mukherjee	20.6.1952 - 20.3.1957
2.	Shri Sankar Das Banerji	4.6.1957 - 15.5.1959
3.	Shri Bankim Chandra Kar	22.2.1960 - 11.3.1962
4.	Shri Keshab Chandra Basu	12.3.1962 - 7.3.1967
5.	Shri Bijoy Kumar Banerjee	8.3.1967 - 2.5.1971
6.	Shri Apurba Lal Majumder	3.5.1971 - 23.6.1977
7.	Shri S.A.M. Habibullah	24.6.1977 - 13.6.1982
8.	Shri Hashim Abdul Halim	14.6.1982 - 6.5.1987; 6.5.1987 - 18.6.1991; 18.6.1991 - 10.6.1996; 10.6.1996-14.6.2001; 14.6.2001 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Ashutosh Mallick	20.6.1952 - 4.5.1966
2.	Shri Narendra Nath Sen	29.8.1966 - 28.2.1967
3.	Shri Haridas Mitra	8.3.1967 - 20.2.1968
4.	Shri Apurba Lal Majumder	6.3.1969 - 30.7.1970

5.	Shri Pijush Kanti Mukherjee	3.5.1971 - 25.6.1971
6.	Shri Haridas Mitra	24.3.1972 - 30.4.1977
7.	Shri Kalimuddin Shams	27.6.1977 - 24.5.1982
		14.6.1982 - 30.3.1987
8.	Shri Anil Mukherjee	6.5.1987 - 31.3.1991
		18.6.1991 - 16.5.1996
		10.6.1996 - 15.5.2001
		14.6.2001 - 17.2.2002
9.	Shri Kripa Sindhu Saha	7.3.2002 -

Delhi Legislative Assembly

Speakers

Sl. No.	Name	Period From	To
1.	Shri Gurmukh Nihal Singh	22.3.1952	12.2.1955
2.	Smt. Sushila Nayyar	25.2.1955	6.12.1955

Deputy Speakers

Sl. No.	Name	Period From	To
1.	Shri Gopi Nath Aman	1952	1957

Metropolitan Council

Chairmen

Sl. No.	Name	Period From	To
1.	Shri Jag Parvesh Chandra	3.10.1966	27.3.1967
2.	Shri L.K. Advani	28.3.1967	19.4.1970
3.	Shri Shyam Charan Gupta	19.4.1970	19.3.1972
4.	Mir Mustaq Ahmed	20.3.1972	27.6.1977
5.	Shri Kalka Dass	28.6.1977	17.3.1983
6.	Shri Purushottam Goyel	18.3.1983	12.1.1990

Deputy Chairmen

Sl. No.	Name	Period From To
1.	Shri Janardhan Gupta	1967 - 1972
2.	Shri Jag Parvesh Chandra	1972 - 1977
3.	Begum Khurshid Kidwai	1977 - 1983
4.	Smt. Tajdar Babar	1983 - 1989

Legislative Assembly

Speakers

Sl. No.	Name	Period From To
1.	Shri Charti Lal Goel	14.12.1993 - 14.12.1998
2.	Ch. Prem Singh	14.12.1998 - 17.6.2003
3.	Shri Subhash Chopra	3.7.2003 - 17.12.2003
4.	Shri Ajay Maken	17.12.2003 - 28.6.2004
5.	Ch. Prem Singh	20.7.2004 -

Deputy Speakers

Sl. No.	Name	Period From To
1.	Shri Alok Kumar	17.12.1993 - 25.9.1994
2.	Ch. Fateh Singh	11.8.1995 - November 1998
3.	Smt. Kiran Choudhary	7.4.1999 - November 2003
4.	Smt. Krishna Tirath	23.12.2003 - 28.6.2004
5.	Shri Shoiab Iqbal	23.7.2004 -

Pondicherry Legislative Assembly

Speakers

Sl. No.	Name	Period	
		From	To
1.	Shri M.O.H. Farook	19.9.1964	19.3.1967
2.	Shri P. Shanmugam	30.3.1967	9.3.1968
3.	Shri S. Manickavasagam	25.3.1968	22.3.1969
4.	Shri S. Perumal	22.3.1969	2.12.1971
5.	Shri M.L. Selvaradjan	29.3.1972	3.1.1974
6.	Shri S. Pakkiam	6.3.1974	28.3.1974
7.	Shri K. Kanthi	2.7.1977	12.11.1978
8.	Shri M.O.H. Farook	16.1.1980	24.6.1983
9.	Shri Kamichetty Sri Parasurama Varaprasada Rao Naidu	16.3.1985	19.1.1989
10.	Shri M. Chandirakasu	29.3.1989	5.3.1990
11.	Shri G. Palaniraja	5.3.1990	4.3.1991
12.	Shri P. Kannan	4.7.1991	14.5.1996
13.	Shri V.M.C. Sivakumar	10.6.1996	18.3.2000
14.	Shri A.V. Subramanian	24.5.2000	31.5.2001
15.	Shri M.D.R. Ramachandharan	11.6.2001	-

Deputy Speakers

Sl. No.	Name	Period	
		From	To
1.	Shri Vanmeri Nadeyi Purushothaman	25.9.1964	22.3.1969
2.	Shri M.L. Selvaradjou	22.3.1969	28.3.1972
3.	Shri Kamichetty Sri Parasurama Varaprasada Rao Naidu	5.4.1972	3.1.1974
4.	Shri S. Pazhaninathan	2.7.1977	12.11.1978
5.	Shri L. Joseph Mariadoss	16.1.1980	24.6.1983
6.	Shri M. Chandirakasu	16.3.1985	28.3.1989
7.	Shri P.K. Sathianandan	5.4.1989	4.3.1990
8.	Shri A. Bakthavatchalam	29.3.1990	4.3.1991
9.	Shri A.V. Subramanian	4.7.1991	14.5.1996
10.	Shri V. Nagarathinam	12.6.1996	23.5.1997
11.	Shri M. Kandasamy	23.8.1998	30.5.2000
12.	Shri K. Rajasegaran	30.5.2000	15.5.2001
13.	Shri M. Chandirakasu	5.7.2001	10.11.2001
14.	Shri A.V. Subramanian	12.12.2001	-

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