

THE ANTI-DEFECTION LAW: SHIELDING DEMOCRACY OR SILENCING DISSENT?

AUTHOR – HARSH PORWAL, LAW COLLEGE, DEHRADUN

BEST CITATION – HARSH PORWAL, THE ANTI-DEFECTION LAW: SHIELDING DEMOCRACY OR SILENCING DISSENT?, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (10) OF 2025, PG. 771-780, APIS – 3920 – 0001 & ISSN – 2583-2344.

3.1. INTRODUCTION

The Constitution of India is the supreme law of the land. It frames fundamental political principles, procedures, practices, rights, powers, and duties of the government. It imparts constitutional supremacy and not Parliamentary supremacy, as it is not created by the Parliament but, by a Constituent Assembly, and adopted by its people, with a declaration in its Preamble. In a Parliamentary democracy, the obligations of constitutional morality are expected to be equally binding on the government and the opposition. In India, the same political party treats these obligations very differently when it is in office, and when it is out of it. This has contributed greatly to the popular perception of our political system as being amoral.⁷⁶⁰

⁷⁶⁰ Andre Beteille, 'Constitutional Morality' 43(40) *Economic and Political Weekly* 12(2008).

Democracy and free and fair election are indivisible twins as there is almost an inseparable umbilical cord joining them. In egalitarianism the voter has immense importance and voter cannot be hijacked from the course of free and fair elections. His freedom to elect a candidate of his choice is the foundation of a free and fair election. But after getting elected, if the elected candidate deviates from the course of fairness and purity and becomes a purchasable commodity then he not only betrays the electorate, but also pollutes the pure stream of democracy.

The political parties play a vital role in maintaining accountability in modern mass political democracies. Modern democracies delegate their decision making power to elected representatives, trusting that the re-election incentive will encourage good policy making. Indubitably, political parties serve other important purposes as well. This incentive is challenged by the complexity of modern life. Most of the people face severe problems regarding information as they do not have time to monitor the daily activities of legislators and in order to have a check upon the actions of the legislators, the Parliament in its constituent power enacted the Constitution (Fifty-Second Amendment) Act, 1985, thereby, providing for defection as a method of disqualification. Articles 101, 102, 190, and 191 of the Indian Constitution were also amended by this amendment and the provisions were inserted with regard to the vacation of seats and disqualification from the membership of the Parliament and the State Legislature respectively.

The Constitution (Fifty-Second Amendment) Act, 1985, apart from amending different Articles of the Constitution relating to the disqualification of members, inserted a new Tenth Schedule to the Constitution which contains conditions of disqualification on grounds of defection. Various provisions dealing with defection are in the form of Paragraphs contained in Tenth Schedule. The provisions were designed for outlawing

defections. It seeks to effect an automatic disqualification of political defectors from membership of either in Parliament, Legislative Assemblies and Councils⁷⁶¹.

3.2. OBJECT AND CONSTITUTIONAL VALIDITY OF THE ANTI DEFECTION LAW IN INDIA

3.2.1. Object of Anti Defection Law in India

The primary object of the anti defection law is to cure the malady of unprincipled defection of legislators, at the same time, giving scope for realignment of forces by way of merger of political parties on ideological moorings. Alignments can be advanced not for deserting parties but also for not deserting. But all defections cannot be termed as unprincipled. The phenomenon of defection was not unknown to the older democracies. In India also a number of stalwart who had changed their political allegiance at one time or other in the past, purely influenced by honest differences with the leadership of the party. However, the emerging political situation in India at the moment is alarming⁷⁶².

The main objective outlined in the Constitution (Fifty-Second Amendment) Act, 1985 is to safeguard the very foundation of democratic politics and infuse the political ethics in the members of elected representatives to make stronger the rule of law. It states as under:

"The evil of political defections has been a matter of nationalized concern. If it is not combated, it is likely to undermine the very foundation 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 outlawing defection and fulfilling the above assurance."⁷⁶³

⁷⁶¹ S.L. Sikri, *The Indian Government And Politics* 33 (Kalyani Publication House 1st ed., 2004).

⁷⁶² D. Sripathi Rao, "Anti Defection Law-Split in Parties" 39 *The Journal of Parliamentary Information* 100 (1993).

⁷⁶³ *Kibito Hollobon v. Zachildu*, AIR 1993 SC 412.

The rationale for enacting the Constitution (Fifty-Second Amendment) Act⁹, inclusion of the Tenth Schedule and other amendments, was not only to stabilize the legally elected governments and to prevent the political immorality and corruption, but also to construct them effectively. If the provisions are read down, the chief purpose would be defeated. The chief object is to curtail the evil of political defections motivated by lure of office or other similar considerations which endanger the foundations of our democracy. The objects and purposes of the Tenth Schedule 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. The same further prevents independent members from losing their character as such and prohibits them from joining a political party.

3.2.2. Constitutional Validity of Anti Defection Law in India

The constitutional validity of the anti defection law has been a subject matter of a controversy from the very beginning. It has been questioned on many grounds like it is violative of the basic structure of the Constitution, and it also goes afar the competency of Parliament. Numerous questions regarding political, constitutional and legal grounds of anti defection were asked which are discussed in brief as follows: Whether the people voted for party programmes and politics or for persons, if for the latter, whether party bonds could be given constitutional recognition and protection?

(i) Whether the fundamental relationship was between the party and the member or between the member and the constituency people whom he represented?

(ii) Whether there was an unbreakable

link between the members and the political party on whose symbol they contested the election?

(iii) The notion 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 Constitution⁷⁶⁴.

The above submissions were considered in *Kihoto Hollohan v. Zachillu*⁷⁶⁵. It was held by the Supreme Court that:

Paragraph 7 of the Tenth Schedule which bars the jurisdiction of the Courts was struck down as being *ultra vires* of the Constitution by the High Court of Punjab and Haryana and an appeal against this order was preferred by the government in the Supreme Court. Several writ petitions challenging the validity and constitutionality of the 1985 enactment were also filed in the Supreme Court and various High Courts. The Supreme Court, on the appeal of the government, withdrew and transferred to itself all the writ petitions pending before distinct High Courts as it was felt by the government that substantial questions of law were involved in them.

The constitutional validity of Paragraph 7 of the Tenth Schedule came into question in the landmark case of *Prakash Singh Badal & others v. Union of India & Others*⁷⁶⁶, in the Punjab and Haryana High Court. The Court addressed the issue of constitutional validity of Paragraph 7 by an integrated approach of interpreting Paragraph 6 and 7. The Punjab and Haryana High Court clarified that the finality of the orders of the Speakers and Chairmen of the Legislative Houses under the Tenth Schedule to the Constitution is subject to judicial review, but not subject to appeal, revision or review.

⁷⁶⁴ Dr. Subhash .C.Kashyap, *Anti Defection Law and Parliamentary Privileges* 8 (Universal Law Publications, 3rd ed., 2011).

⁷⁶⁵ AIR 1993 SC 412.

⁷⁶⁶ AIR 1987 P&H 263.

Holding Paragraph 7 of the Tenth Schedule to the Constitution which ousted the jurisdiction of all courts as *ultra vires* the Constitution, the Punjab and Haryana High Court in the same case confirmed as under:-

That in this present case, an additional disqualification has been provided and the jurisdiction to decide any question relating to this matter has been vested in the Speaker whose decision has been made final by 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. Therefore, he is required to give a decision on a disputed question involving a very valuable right of an elected member of the Lok Sabha or the Vidhan Sabha. Evidently, the decision of the Speaker would be amendable to the jurisdiction of judicial review of the High Courts and the Supreme Court but for the provision contained in Para 7 in view of the decision of the Supreme Court in a case where it was held that the President acting under Article 217(3) of the Constitution performs a judicial function of great importance under the scheme of the Constitution. Therefore, the conclusion is 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 affected 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, 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.

3.3. PROVISIONS OF THE CONSTITUTION COMBATING DEFECTION

The Amendment Act also amended Articles 101 and 102 of the Constitution by introducing sub-articles to them, which deals with the vacation of seats and disqualification of members from Central Legislature and Articles 190 and 191,

which deals with the same in State Legislature. In the context of the introduction of sub article (2) of 102 and sub article (2) of 191 of the Constitution, a proceeding under the Tenth Schedule is one to decide whether a member has become disqualified to hold his position as a Member of Parliament or of the State Legislature on the ground of defection. The Tenth Schedule cannot be read independently of Articles 102 and 191.

3.3.1. ARTICLE 101 – VACATION OF SEATS

- (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.
- (2) No person shall be a member both of Parliament and of a House of the Legislature of a State and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.
- (3) If a member of either House of Parliament-
 - (a) becomes subject to any of the disqualification's mentioned in [clause (1) or clause (2) of Article 102], or
 - (b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, and his resignation is accepted by the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant: Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the chairman or the Speaker, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

(4) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

3.3.2. ARTICLE 102(2) DISQUALIFICATIONS FOR MEMBERSHIP

A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

Article 102 before it was amended by the Constitution (Fifty- Second Amendment) Act, 1985 provided for a person being disqualified for being chosen as and for being a member of Parliament on grounds of holding an office of profit, being of unsound mind or an undischarged insolvent or not being a citizen of India or being otherwise disqualified by or under any other law. The Representation of the People Act, 1951 disqualified a person from the membership of a legislature for being guilty of electoral offences, corrupt practices etc.

3.3.3. Article 190 – Vacation of Seats

1. No person shall be a member of both Houses of the legislature of a State and provision shall be made by the legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

2. No person shall be a member of the legislatures of two or more States specified in the First Schedule and if a person is chosen a member of the legislatures of two or more such States, then, at the expiration of such period as may be specified in rules made by the President, that person's seat in the legislatures of all such States shall become vacant, unless he has previously resigned his seat in the legislatures of all but one of the States.

3. If a member of a House of the legislature

of a State –

a. becomes subject to any of the disqualifications mentioned in [clause (1) or clause

(2) of article 191]; or

b. resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, and his resignation is accepted by the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant:

Provided that in the case of any resignation referred to in sub-clause (b), if from information received or otherwise and after making such inquiry as he thinks fit, the Speaker or the Chairman, as the case may be, is satisfied that such resignation is not voluntary or genuine, he shall not accept such resignation.

4. If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant: Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

3.3.4. ARTICLE 191(2) DISQUALIFICATIONS FOR MEMBERSHIP³⁵

A person shall be disqualified for being a member of the Legislature Assembly or Legislature Council of a State if he is so disqualified under the Tenth Schedule.

This corresponds to article 102(2) and makes a similar provision with reference to disqualification of a member of a State Legislature under the Tenth Schedule i.e. on the ground of defection from one's party. Article 191³⁶ before it was amended by the Constitution (Fifty- Second Amendment) Act, 1985 provided for a person being disqualified for being chosen as and for being a member of Parliament on grounds of holding an office of profit, being of unsound mind or an un-

discharged insolvent or not being a citizen of India or being otherwise disqualified by or under any other law.

At the end, the Constitution (Fifty-Second Amendment) Act, 1985, amended the provisions of Articles 101, whereby, the reference of becoming subject to disqualification of a member on the ground of disqualification under Tenth schedule of the Constitution as a ground of defection by amending sub Clauses (a) of Clause

(3) of Article 101 and Clause (2) was inserted to Article 102 of the Constitution by Section 3 of the Constitution (Fifty-Second Amendment) Act, 1985, for the Parliament and similar provisions were inserted for the Legislative Assemblies and Legislative Councils in Articles 190 and 191 of Constitution, providing for a provision by which the member of the State Legislature would be subject to disqualification on ground of defection. Such ground was created by amending sub-clause (a) of clause (3) of Article 190 and clause (2) was inserted to Article 191 of the Constitution for the vacation of the seats on the ground of disqualification from the membership of the Parliament and of the State Legislature.

3.3.5. TENTH SCHEDULE AND DEFECTION

The Constitution (Fifty-Second Amendment) Act, 1985 makes the following provisions in respect of Members of Parliament as well as of State Legislature. The Constitution (Fifty-Second Amendment) Act, 1985 apart from amending the articles of the Constitution also added the Tenth Schedule. The Tenth Schedule has 8 Paragraphs (Paragraphs means a Paragraph of this Schedule) which provides with the disqualification on the grounds of defection. These provisions were introduced to meet the threat posed to the democracy by defection. A ground of disqualification from the membership of the Parliament or of the Assembly on the ground of defection was introduced.

3.4. ROLE OF OTHER COMMITTEES AND COMMISSION:

As we know that the Tenth Schedule of Constitution was challenged many times in different High Courts of the country as illegal and unconstitutional. So the need to remove such lacunae was felt of the law in hand and various Committees and Law Commission Election Commission and other Commissions recommended many changes which are discussed below in detail:-

3.4.1. DINESH GOSWAMI COMMITTEE ON ELECTORAL REFORMS

The Government constituted a Committee of 11 members under the Chairmanship of Law Minister Shri Dinesh Goswami to go into the various aspects of electoral reforms. The committee recommended many suggestions on electoral reforms and few recommendations were relating to defection measures the following were made by the Committee:

1. 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 of vote of confidence or a motion amounting to no- confidence or Money Bill or motion of vote of thanks to the President's address.
 - (c) The power of deciding the legal issue of disqualification should not be left to the Speaker or Chairman of the House but to the President or the Governor, as the case may be, who shall act on the advice of the Election Commission, to whom the question should be referred for determination as in the case of any other post-election disqualification of a Member.
2. The nominated members of the House concerned should incur disqualification if he joins any political party at any period of time¹¹⁷.

3.4.2. HALIM COMMITTEE ON ANTI DEFECTION LAW

The Committee was constituted in 1994 to review the anti defection law under the chairmanship of Shri Hashim Abdul Halim, Speaker of West Bengal Legislative Assembly. The Report was represented with some recommendations which are as follows:

1. That the words 'voluntarily giving up membership of a political party' be comprehensively defined.
2. Prohibitions on joining another party or holding offices in the government are imposed on expelled members.
3. Most importantly, the term political party should be defined clearly⁷⁶⁷.

3.4.3. PARLIAMENTARY STANDING COMMITTEE

The Department Related Parliamentary Standing Committee on Personal, Public Grievances, Law and Justice in its Sixty-First Report on "Electoral Reforms- Code of Conduct for Political Parties & Anti defection Law" presented to the Rajya Sabha on August 26, 2013, gave the suggestions concerning the Anti-defection laws which are discussed in forthcoming paragraphs:-

1. Merger of political parties with another political party should not be exempted.
2. Provision of anti defection law to be made applicable to Autonomous District Councils in North Eastern Region.
3. The nominated members joining political party within the period of six months should also be disqualified as has been the case of independent members.
4. The Committee was not satisfied with the provisions of the Tenth Schedule which provide different norms for disqualification of Independent member and Nominated member. The Committee noted that six months time has

been given to a nominated member to join a political party, whereas an independent candidate cannot join a political party at all. Therefore, the Committee recommended for reconsideration of existing provision so as to enable independent members to join a political parties in the same manner as in the cases of nominated member.

5. The Committee also observed that the Judiciary should not violate the theory of separation of power by interfering with the adjudicatory power of the Presiding Officers under the Tenth Schedule. The matter falling within the domain of the Presiding Officer within the four corner of the House should have been left to the House itself and not to affect the supremacy of the Legislature.

3.4.4. 170th REPORT OF LAW COMMISSION OF INDIA ON REFORMS OF ELECTORAL REFORMS

The Ministry of Law, Justice and Company Affairs requested the Law Commission under the chairmanship of Justice B P Jeevan Reddy to undertake comprehensive study of the measures required to expedite the election petition. Law Commission suo moto undertook a thorough review of Representation of the People's Act, 1951 with an objective to make electoral process fair, transparent and equitable. The following were the recommendations of the Commission:

1. Provisions which exempt splits and mergers from disqualification should be deleted.
2. The pre- poll electoral fronts should be treated as political parties under anti defection law.
3. Power to decide the question of disqualification under the Tenth Schedule should be entrusted to the President in the case of Parliament and to the Governor in the case of State Legislature, who shall act on the advice of the Election Commission.
4. The definition of the expression "Original Political Party" may be dropped and its place

⁷⁶⁷ Government of India, Report: *Committee on Electoral Reforms* (Ministry of Home Affairs, May, 1990).

definition of “Political Party” should be inserted.

5. The issuance of whips should be limited to the instances when the government is in danger.⁷⁶⁸

3.4.5. 255TH REPORT OF LAW COMMISSION OF INDIA ON REFORMS OF ELECTORAL REFORMS

The Ministry of Law and Justice, in January 2013, requested the Twentieth Law Commission of India under the chairmanship of former Chief Justice of Delhi High Court Mr. Ajit Prakash Shah to consider the issue of “Electoral Reforms” in its entirety and suggest comprehensive measures for changes in the law. The Supreme Court of India, in the matter of *Public Interest Foundation & Others v. Union of India & Another*⁷⁶⁹, directed the Law Commission of India to make its suggestions on two specific issues, (i) curbing criminalization of politics and needed law reform and (ii) impact and consequences of candidates filing false affidavits and needed law reforms to check such practice. In the light of this judgment, the Commission worked specifically on these two areas and, after series of discussions, followed by a National Consultation held on February 1, 2014, submitted its 244th Report titled “Electoral Disqualifications” on February 24, 2014 to the Government of India.

After the submission of Report No.244, the Commission circulated another questionnaire to all registered national and State political parties seeking their views on ten points, the response received was not very encouraging, though. However, the Commission undertook an extensive study to suggest electoral reforms, held various rounds of discussions with the stakeholders and analysed in-depth the issues involved. After detailed discussions, the Commission came up with its recommendations which are put in the form its final Report¹²². The Law Commission recommends an appropriate amendment to

the Tenth Schedule of the Constitution which shall have the effect of vesting the power to decide on questions of disqualification on the ground of defection, with the President or the Governor (as the case may be) who shall act on the advice of the Election Commission. This would also help in preserving the integrity of the Speaker’s office. Hence, Paragraph 6 of the Tenth Schedule should be amended to read as under:

“6. Decision on questions as to disqualification on ground of defection-

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the:

a) President, in case of disqualification of a member of either House of Parliament;

b) Governor, in case of disqualification of a member of a House of the Legislature of a State.

Provided that the decision of the President or the Governor as to whether a member of a House has become subject to disqualification under this Schedule shall be final.

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

Provided that no member of a House shall be disqualified under this Schedule, unless he has been given a reasonable opportunity of being heard by the Commission in the matter.”¹²³

3.4.6. NATIONAL CONSTITUTION REVIEW COMMISSION

The National Commission to Review the Working of the Constitution was set up under the Chairmanship of Justice M.N.Venkatachaliah and the report was submitted to the Government of India. The Commission examined, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing

⁷⁶⁸ Law Commission, 170th Report on Reforms of Electoral Laws (May, 1999).

⁷⁶⁹ Writ Petition (Civil) No. 536 of 2011.

needs of efficient, smooth and effective system of governance and socio-economic growth of modern India within the framework of parliamentary democracy, and to recommend changes, if any, that are requisite in the provisions of the Constitution without interfering with its basic structure or features. The Commission submitted its Report to the Government on March 31, 2002 and also made recommendations for amendments to anti defection law, a gist of which is as follows⁷⁷⁰:

1. That all the defectors should be barred from holding public office or any remunerative political post for the duration of the remaining term.
2. All defectors whether singly or in groups (under the so called splits or mergers) should be disqualified from membership forthwith.
3. Petitions under the Tenth schedule should be heard and disposed of not by the presiding officer of the house but by the Election Commission.
4. The vote cast by a defector to topple a government should be treated as invalid.

3.4.7. ELECTION COMMISSION OF INDIA

The Election Commission of India, in its Report on Proposed Electoral Reforms 2004, observed that:-

“All political parties are aware of some of the decisions of the Hon’ble Speakers, leading to controversies and further litigations in courts of law. The Commission sees substance in the suggestion that the legal issues of disqualifications under the Tenth Schedule should also be left to the President and the Governors of the States concerned, as in the case of all other post election disqualifications of sitting MPs, MLAs and MLCs, under Articles 103 and 192 of the Constitution. In the case of disqualifications under the Tenth Schedule also, the President or the Governor may act on

the opinion given by the Election Commission.”

1. As a result, the Election Commission of India recommended that the questions of disqualification of members on the ground of defection should also be decided by the President and Governors, on the opinion of the Election Commission of India, which is now a three-member Constitutional body.
2. The Election Commission recommended that, If decisions relating to anti-defection matters are rendered by the President or the Governor, on the opinion of the Commission, after giving full opportunity of being heard to the parties concerned in the matter of disqualification on the ground of defection then the same would receive more respect and acceptability from the common people.

3.4.8. SECOND ADMINISTRATIVE REFORMS COMMISSION

The Second Administrative Reforms Commission in its 4th Report on “Ethics in Governance” submitted to the Government of India on January, 2007, and had observed that the defection is a malaise of Indian political life and it represents manipulation of the political system for furthering private interests, a potent source of political corruption. The Tenth Schedule whilst prohibiting individual defection permitted group defection in the name of merger and provided opportunities for transgressing political ethics and opportunism. The Ninety-First Constitutional Amendment Act 2003, tighten the anti defection provisions of the Tenth Schedule and thus made defection virtually impossible and is an important step towards the cleaning of Indian politics. The most significant recommendations of the Commission:-¹²⁶

1. The matter of disqualification of members on grounds of defection should be decided by the President or Governor on the advice of the Election Commission.
2. The Constitution should be amended to ensure that if one or more parties in a coalition with a common programme mandated by the

⁷⁷⁰ Government of India, “National Commission to Review the Working of the Constitution Reports”, Vol.1, (Ministry of Law, Justice and Company Affairs Department of Legal Affairs, Chapter 4, 2002).

electorate either explicitly before the elections or implicitly while forming the government, realign midstream with one or more parties outside the coalition, then Members of that party or parties shall have to seek a fresh mandate from the electorate may also legislate under Article 198 (e).

3.5. AMENDMENT OF TENTH SCHEDULE

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 for example from March 1985 to December 2003, total 13 members of Lok Sabha were disqualified by the Speaker and 2 members of Rajya Sabha were disqualified and 103 members of State Legislative assemblies were disqualified. So it was the need of the hour to amend the Tenth Schedule. The Standing Committee of Home Affairs to which the Bill was referred presented their Report in the Rajya Sabha on December 5, 2003 and it was laid on the Table of Lok Sabha on the same day.

