

CHAPTER III-A
PARTY SYSTEM IN INDIA & ANTI DEFECTION LAW
PARTY SYSTEM IN INDIA

- 3.1 INTRODUCTION
- 3.2. ELECTOCARDIOGRAM OF PARTY POSITION IN LOKSABHA
- 3.3. CONSTITUTIONAL AND LEGAL POSITION
 - 3.3.1 PROVISIONS FOR RECOGNITION
 - 3.3.2. PROVISION RELATING TO DE-RECOGNITION
- 3.4 ROBLEM IN THE STYLE OF FUNCTIONING OF THE POLITICAL PARTIES
 - 3.4.1. ABSENCE OF INNER PARTY DEMOCRACY
 - 3.4.2. NEED FOR FUNDS
 - 3.4.3. LACK OF IDEOLOGY AND VALUES IN POLITICS
 - 3.4.4. REGIONALISM
 - 3.4.5. CASTEISM
 - 3.4.6. COMMUNALISM
 - 3.4.7. CRIMINALISATION
 - 3.4.8. GROWING VIOLENCE
 - 3.4.9. FRACTIONALIZATION AND COALITIONS
 - 3.4.10. TRAINING OF MEMBERS
 - 3.4.11. CAMPAIGN METHODS
- 3.5. SOME AREAS OF SERIOUS CONCERN
- 3.6. PARTY SYSTEM IN SOME OTHER COUNTRIES
- 3.7. EFFORTS MADE TO REFORM THE PARTY SYSTEM
 - 3.6.1. TARKUNDE COMMITTEE (1974-75)
 - 3.6.2. GOSWAMI COMMITTEE (1990)
 - 3.6.3. KRISHNA IYER COMMITTEE (1994)
 - 3.6.4. LAW COMMISSION REPORT (1998)
 - 3.6.5. LOK RAJ BARAL STUDY REPORT (2000)
- 3.7. PARTY SYSTEM IN SOME OTHER COUNTRIES
- 3.8. CONCLUSION
 - 3.8.1. NEED FOR A LEGISLATION
 - 3.8.2. CRITERIA FOR REGISTRATION AND DE-REGISTRATION
 - 3.8.3. STRUCTURAL REQUIREMENT
 - 3.8.4. EDUCATIONAL TRAINING AND DEVEPOLMENT ACTIVITIES
 - 3.8.5. LEADERSHIP CONVENTIONS
 - 3.8.6. PROBLEM OF PARTY FUNDING AND REGULATING POLITICAL

3.1. INTRODUCTION

In the Parliamentary form of government party government is the real name for the Parliamentary democracy. Political parties are not merely a link between the government and the people; they are the instrumentalities of social change, social resurrection and transformation. Political parties play the most crucial role in the electoral process – in setting up candidates and conducting election campaigns.

The history of origin and growth of political parties in India can be traced to the days of India's struggle for freedom. The development of the political parties in India has followed an altogether different pattern that has already been discussed in the II Chapter (). The Indian National Congress was perhaps our first political party; it came into existence in the year 1885. There were some groups formed by patriotic Indians before that, but they did not converge into becoming a political party. The Indian National Congress was the natural and inevitable outcome of a national awakening. All the major political parties (with the exception of the BJP) that exist in India today were at one time within the fold of the Congress. Political parties and the party system in India have been greatly influenced by cultural diversity, social, ethnic, caste, community and religious pluralism, traditions of the nationalist movement, contrasting style of party leadership, and clashing ideological perspectives.

The evolution of the party system after Independence presents a study of transformation from one-party dominant system to a complex of multi-party configuration, in which presently strong trends of fragmentation, factionalism, and regionalism, coupled with the desire to form alliances for seeking a share in the pie of power are being witnessed. In recent years, we have witnessed a succession of unstable governments, and the reason for such a recurring phenomenon is the mal-functioning of political parties. Alliances and

coalitions are made, broken and changed at whim, and the balance of power seems to be held not by those at the Union level, but by minor parties. Indian political parties have fragmented over the years. Frequent party splits, mergers and counter splits have dramatically increased the number of parties that now contest elections. In 1952, 74 parties contested elections, whilst in recent years this number has swollen to more than 177, and has been consistently increasing. The instability at the Union level or in the States can be attributed solely to the growing number of parties, or the malaise with which the political system suffers today lies in the functioning and the dynamics of the party system in India, apart from the other causes in the working of the political system as a whole.

3.1.2. ELECTOCARDIOGRAM OF POLITICAL PARTIES IN LOK SABHA

First Lok Sabha

In the first Lok Sabha election in 1952, the Congress was opposed by as many as 14 national parties and 50 odd state parties and a large number of independent candidates. In the first general elections the Congress emerged as the big brother capturing 364 seats out of a total 489 and formed the government. The table of party position is given in the Annexure-A (i).

In the state assemblies the Congress secured 2238 out of 3283 seats, though in Madras, PEPSU and Travankore, the Congress failed to win a majority of seats. The first general election did not throw up a National Opposition party.

Second Lok Sabha

The second general elections in 1957 did not affect any change in the position of the political parties. The Communists improved their position by one seat, the Jansangh got only four candidates elected. The Congress reached its zenith 371 seats out of 494 while the

opposition parties remained where they were. It was the result of success of some of the policies of the Nehru government. Its foreign policy of non alignment, the success of the First Five-Year Plan and the reorganisation of the states on the linguistic basis. It was only in Kerala that the Communists were able to win 60 out of 126 seats. Party position is given in the Annexure -A(ii).

The first two Lok Sabhas were dominated by the charismatic personality of Jawahar Lal Nehru. The communists constituted the largest opposition Party and there were already prominent parliamentary figures.

Third Lok Sabha

But by the time the country reached the third general elections, it was amidst acute difficulties in all areas, economic, social and political. Corruption had entered all the seams of the national life and people's frustration was expressed by agitations, strikes and demonstrations. The second five year plan did not yield the expected results, agriculture was in ruins. Distribution systems had clogged. Price index went up staggeringly and unemployment soared. The Nagpur resolution of the Congress led to the birth of the Swatantra Party. This was also the period when the faction fight within the Congress started. On the eve of the third general elections Goa was liberated and this gave some boost to the sagging morale of the Congress. But despite all these difficulties the Congress image in the people was not bad because no other party had been able to build up its image. The charismatic leadership had also not worn out. In third general elections the number of contesting candidates was the highest, yet, with the exception of the Congress, no single party put up even 215 candidates for 494 seats of the Lok Sabha and thus was overruled even a theoretical possibility of any party other than the Congress emerging as the majority party. In several constituencies the opposition parties combined to defeat the Congress candidate, but

without any appreciable result. The Congress once again swept the pole. Party position is given in the Annexure A (iii).

Although in the third general elections the Congress emerged victorious, several new factors came to the fore which shook the Congress. In some states the opposition trounced the Congress. In Tamilnadu, the DMK and in Punjab the Akalies emerged as a force to be reckoned with. The Communist continued to be the second largest party in the Lok Sabha. The Jansangha and the Swatantra Party registered gains. The penetration of the Jansangh in the state assemblies was still deeper and a possibility of the rightist emerging as the third force in the politics arose.

Fourth Lok Sabha

As the country was approaching the fourth general elections, the situation in the country was grim. The economic crisis had deepened. The prices soared up, the recession, near famine conditions, frustration and sagging morale of people. Rampant favoritism, open nepotism and utter indifference overtook the country. But still the opposition parties were not in a position to challenge the hegemony of the Congress, none of the opposition parties was in a position to provide a viable alternative to the Congress. Despite heavy odds against the Congress, the irony of the Indian polity was that no single party contested even half of the seats of the Lok Sabha. At best, some of the opposition parties had a vague hope of getting a chance of forming a coalition at the Centre. There were more multi corned contests than ever before. The large number of independent candidates added to the woe of the opposition. Only silver lining in the otherwise bleak horizon was that in some states the opposition parties were able to arrive at some electoral accord.

The result of the fourth general elections were devastating to all political parties at the national level. The Congress was badly mauled; it could retain only a bare majority in the house. But none of the

opposition parties could get even 50 seats individually. No opposition party even qualified to be recognised as the 'Opposition Party' in Lok Sabha. Party position is given in the Annexure A (iv).

The election results once again confirmed the basic postulate that a divided opposition can not rest power from the majority party even though all the majority parties together polled more than 51% votes. In some states coalition governments composed of opposition parties came into existence, and the parties who had fought each against in the elections combined. But these coalition governments came into existence because of the opportunism and power hunger of politicians and not on any firm footing, crumbled one after the other, though the congress had its share in the toppling game. The major cause of the fall of the United Front Government in the seats was that these were opportunistic alliances. Those parties which has nothing in common to share, came together with the sole motive of forming government, of having a share in power; even when a common minimum programme was chalked out, it was more a show than real understanding among the coalition partners. In this game of power politics, emerged the politics of defection. All parties including the Congress played this game. The politics of defections rose as a demon who wanted to devour the parliamentary democracy. At this time a piece of legislation regarding defections was moved, but nobody was serious and the Bill remained pending.

The party system totally broke down; as parties or groups were formed and reformed with the sole urge to grab power. Thus politics was substituted by intrigue and discussion by abuse; the toppling of Government s became a game, and in this game many filled their pockets.

The 1967 election was in a sense an indication of people's disenchantment with the politics of platitudes and of an urge for change. But the events that followed saddened all the lovers of

democracy. The major cause of the fall of the United Front Governments in the states was that, these were opportunistic alliances.

At this time, the events at the national level were moving fast. The situation at the economic front continued to be gloomy. A rift had taken in the Congress. Though Indira Gandhi after the death of Lal Bahadur Shastri won in the leadership contest, Congress was divided into two groups, though the conflict had not come out in the open. After the 1967 general elections the factions had compromised and Indira Gandhi became Prime Minister and Morarji the Deputy Prime Minister. But the cleavage continued due to fundamental difference between the approach of Indiraji and Morarji. the differences were both ideological as well as temperamental. Indiraji symbolized the Leftist trends in the party and Morarji symbolized the conservative, rightist trends in the Congress.

On November 12, 1969 the Congress working committee deprived Indira Gandhi of the primary membership of Congress on the charge of grave acts of indiscipline with ambition to concentrate all power in her hands. This led to the formal split in the Congress. Congress (O) as an opposition group in Parliament. Morarji became its Chairman and Ram Subhag Singh and S.N. Mishra leaders of the party in Lok Sabha and the Rajya Sabha respectively. The Indira Congress came to be known as the Congress (I). Hers was a minority Government and depended for its survival upon the support of the opposition groups. Indira Gandhi came out with radical reforms: Bank Nationalization, abolition of privy purses and there was talk of ceiling on urban property. When the Supreme Court struck at the Bank Nationalisation law and the Privy Purses abolition law she called for mid term poll. On December 27, 1970 the fourth Lok Sabha was dissolved announcing the mid-term poll. The Congress fought the election on one issue- **garibi hatao**. Indira Gandhi sought a mandate from the people for carrying out her policies, policies of socialism and secularism. She

became a 'hero' and sort out a personality cult emerged in Indian politics.

Fifth Lok Sabha

The opposition parties consisting of the Congress(o), the Samyukta Socialist Party, the Swatantra and the Jan Sangh combined in an election alliance which was given the name of "Grand Alliance". But they could not arrive at a common minimum programme. Each party brought out its separate manifesto. The co-ordination committee could not come out with one common list of candidates for all constituencies; in about 80 constituencies the candidates of constituent parties were pitted against each other. The only common slogan that the Grand alliance could coin was *Indira hatao*. The Indira Congress swept the poll; the Grand Alliance was humbled and humiliated. The Congress got two-third majority in the Lok Sabha. The party depended on none else, not even on communists. The party wise position is given in the Annexure-A(v).

The victorious Congress I, with a view to give effect to its socio economic policies, embarked on a series of constitutional amendments, of which mention may be made of the 24th amendment, the 25th amendment, the 26th amendment and the 29th amendment. However, economic situation did not improve. There was no end of people's woes. This was the opportunity for which the opposition was waiting for. Strikes, demonstrations and agitations broke out. Agitations and hartals became the order of the day, violence erupted, police resorted to lathi-charge and even firing. Jay Prakash Narayan's Bihar agitation spread. Jay Prakash Narayan and the opposition parties gave a call for march on the Parliament. The government was not able to control the situation. Supreme Court was not in favour of Parliament that time.

Sixth Lok Sabha

The Indira Government hit back through internal emergency. All the leaders of Grand Alliance parties were arrested. Thousands of people were put behind the bars under MISA. The press censorship and the publication of objectionable Matter Act, 1976 made the press and publicity media sycophantic. As the emergency dragged on, it became clear to the people that no fundamental change had come about. The common man not merely lost his freedom but also his dignity. When on January 18, 1977 Indira Gandhi suddenly made the announcement that the general election would be held in March, no one thought that India was taking a big leap towards two-party system. The four opposition parties, the Jan Sangh, Samyukta Socialist Party, Bhartiya Lok Dal and the Congress (O) combined in to one party under one banner- the Janata Party-though at that time the leaders of the constituent parties hardly knew as the what policy and programme the new party would stand for, except that if they were to survive they had to provide a united front against the Congress. Jagjivan Ram who had stood to the side of the Congress throughout like a solid rock, along with his other colleagues, resigned from the Congress (I) and found a new party, "Congress for Democracy" to fight growing authoritarian tendencies with in the congress. Excesses of emergency and family planning had already engineered people's contempt and hatred against the Congress caucus which has over powered the party and the Government. it appeared that the issue before the electorate in the sixth general election was not of the choice between the right and left but between the basic human and democratic values and negation of them. The result of the election politics in the sixth general elections was that all parties except the CPI, combined against the Congress. The result was the rout of the Congress. CPI was ignored by electorate. Congress was voted out of power for the first time since independence. The Party-wise position in the sixth Look Sabha is given in the Annexure A (vi).

The most important feature of the sixth general elections is that the Congress candidates lost by big margins. Most of its leaders, including Indira Gandhi, were defeated. The CPI was also routed. On the other hand, the Janata –CFD combine got two hundred and ninety-eight seats from the Northern states –UP-85, Bihar-53, MP-37, Rajasthan-24, Orrisa-15, Gujrat-16 Hariyana-10, Punjab-11 and Delhi-7 and rest from other States. This all shows that Janata Party was given Golden chance almost by all states'electorates and for the first time elections had resulted in the emergence of two strong parties: The Janata Party and the Congress. This election had been a plebiscite. The people had voted against authoritarian and fascistic trends. But still, it was a negative vote. The people had simply voted out the earlier government. They had not voted for the programmes and policies of the new Janata Party, because no one knew exactly what these policies were.

Seventh Lok Sabha

The Janata Party was a kaleidoscopic group of different parties including Congress (O), The Lok Dal, The Samajwadis and The Bhartiya Jansangh. Soon, the internal differences of this motley group surfaced and the Janata Experiment collapsed. The country had to go for mid term elections. The Congress was again voted to power. The people again pinned their hopes in the Congress Party and brought back Indira Gandhi as the next Prime Minister of India on 14th January, 1980. Party position is at the back in Annexure- A(vii).

The tragic end of Indira Gandhi's regime came in 1984, when she was brutally assassinated at the hands of her own security guard. After the untimely and unfortunate death of Indira Gandhi, her elder son, Rajiv Gandhi was given an oath of office of the Prime Minister.

Eighth Lok Sabha

The next general elections were held in the aftermath of the assassination of Mrs. Gandhi. The Congress, led by Shri Rajiv Gandhi

and riding on the sympathy wave, returned to power with a record majority. The party position is given in the Annexure-A (viii). Rajiv Gandhi, started his innings with a very good image, he was being called by every one 'Mr. Clean'. But later on he was not able to maintain this image of 'Mr. Clean', may be due to the ill-advice of the coterie around him. He was also involved in the Bofors Controversy on account of which V.P. Singh had to part Congress and formed 'Jan Morcha' after having been expelled from the Congress. Due to the Boforce controversy Rajiv Gandhi was pressurized to tender resignation.

Ninth Lok Sabha

Ultimately the Lok Sabha was dissolved prematurely. The next general elections were fought on the issue of corruption arising out of the Bofors Scam. The anti Congress parties minus the BJP, once again united to challenge the supremacy of the Congress. Riding on the high moral ground and led by Shri VP Singh, the Janata Party secured 142 seats. The BJP and the Communists promised outside support. Thus, armed with a working majority, the Janata Dal formed the government. The exact party wise position is given in Annexure-A (ix). However, the V. P. Singh government soon fell prey to internal squabbling. Shri V.P. Singh revived the Mandal issue to checkmate Shri Devilal, but it also cost him the support of the BJP. The BJP started the Rath Yatra to construct a temple at the Ram Janm Bhumi, which led to the arrest of Shri Adwani by Laloo Prasad Yadav, the then Bihar Chief Minister and ultimately withdrawal of the outside support to the government of the National Front. Shri V.P. Singh had to resign and Shri Chandra Sekhar formed a minority government with the outside support of the Congress. But this experiment also did not last long and the parliament had to be dissolved in 1991. So the Ninth Lok Sabha did not serve its full term and the House was dissolved on 12th March 1991.

Tenth Lok Sabha

Elections held for the tenth Lok Sabha held in May-June 1991 did not produce a clear majority in the parliament. The Congress was the largest party winning 224 seats in the Lok Sabha. The BJP was the next with 119 seats. Party position is given at the back in Annexure - A(x).

Shri P.V. Narsimha Rao of the Congress formed the government, but he had to manage majority by all means, fair and foul. As a result, we saw the ZMM bribery case. The term of P.V.N. Rao did not achieve anything the only positive outcome of Shri Narsimha Rao's maneuvering was that his government lasted full five years. The general elections to the eleventh Lok Sabha were held on 27th April 1996.

Eleventh Lok Sabha

The results of next general elections were even more devastating. The fractured verdict of the Eleventh Lok Sabha elections also produced a hung parliament. People gave a fractured mandate and made it very difficult for any party to form the Government. The BJP emerged as the largest single party with 162 seats, but it was far short of full majority. The Congress was a poor second with 139 seats. The other parties were quite smaller in number. The partywise position in the 11th Lok Sabha is given in the Annexure -A (xi).

Shri Vajpayee formed the government, since he could not prove his majority, he tendered his resignation. The lure of power brought a number of 13 parties conclave together who formed the government under the name of 'United Front'. The Congress party offered support from outside. The United Front gave two Prime Ministers namely H.D. Deve Gowda on 1 June 1996 and I.K.Gujral on 21 April 1997 in a short span of nearly one and a half year, and then collapsed. The dramatic release of interim report of Jain Commission alleging the

hand of DMK in the assassination of Rajiv Gandhi, turned the tables. The Congress party withdrew its support. The result was the country was once again pushed into elections for a fresh mandate.

Twelfth Lok Sabha

The country had to face mid-term elections after the fall of the Gujral government. But unfortunately the elections again failed to produce a clear majority. The Congress party at that time was in very bad shape and Congress leadership had virtually lost its credibility for various reasons. Now, the BJP changed its strategy of fighting alone and entered into alliances with a number of regional parties. This strategy helped the BJP to improve its own score and also that of the alliance. The contest was mainly between two major pre-poll alliances. One was led by BJP and consisted of Samata Party, Harayana Vikas Party, Lok Shakti, Shiv Sena, Biju Janata Dal, Akali Dal, AIADMK, MDMK, Janata Party, PMK, Tamil Nadu Rajiv Congress, Loktantrik Congress, Jantantrik BSP, Janata Party (Rajaram), Trinamul Congress etc. The other alliance was led by the Congress Party and was composed of RJD, Samajavadi Party, Republican Party of India, BSP, TUPS, TNP, BKKP, Muslim Majlis etc.

The BJP improved its tally to 182 seats, but still it was short of full majority. The BJP formed the government with the help of about 13 parties. The coalition somehow limped on for about 13 months, but after withdrawal of support by mercurial Ms. Jaylalitha, the government fell and the country had to face elections once again. The partywise position in the 12th Lok Sabha is given in Annexure -A (xii). The results of the 1998 elections gave the message that electorate of India had endorsed a two-party or two national alliances system to dominate the country's political scene. On the basis of the voting pattern, it could be said that the voters in almost every State hinted that they did not want their preferences to be divided only between the two major poles of alliances. They identified the two major contenders

and confined their preferences to this either-or option. Both BJP and Congress could do well only in those States where they had struck alliance with some parties. This was an interesting phenomenon which was likely to continue and usher in the country an era of polarization between two parties/alliances. The defeat of the BJP led alliance government by a single vote in the Lok Sabha in May 1999 when the AIADMK suddenly withdrew support paved the way for the 13th General Elections, which were held in August/September 1999.

Thirteenth Lok Sabha

The elections that followed also could not solve the problem of hung parliament. Party position is given in Annexure- A (xiii). The election results again went in favour of the BJP-led National Democratic Alliance (NDA), consisting of 24 Allies led by Sri Atal Behari Vajpayee who formed the new Government in October 1999. But the Government appeared to be handicapped because of lack of a clear mandate. The BJP, though it the largest partner in the NDA, had given up its stand on Article 370, on universal civil code and many other issues. Differences surfaced between the BJP and the RSS. The economic policies followed by the NDA government are the same as were followed by the Congress led governments. It began with enormous expectations at the formation of India's first genuine non-Congress Government but concluded with the same sentimental being transferred back. Lok Sabha was dissolve in February 2004 and elections were declared in April 2004 for fourteenth term of Lok Sabha.

Fourteenth Lok Sabha

The result of recent general elections was quite surprising. Once again people gave a fractured mandate and made it very difficult for any party to form the Government. This time Congress emerged as the largest single party with 145 seats, but it was far short of full majority. The B.J.P. slides to 138. For last two decades, verdict of

people is producing hung Parliaments. Our politicians are learning from it and changing their strategy of fighting alone and entering into pre-poll alliances with a number of regional parties. This strategy helped the Congress to improve its own score and also that of the Alliance. The contest was mainly between two major per-poll Alliances. The Alliance led by Congress party and is composed of RJD, NCP, DMK, PMK, MDMK, TRS, JMM, LNJSP and JKPDP. The Allies were biggest assets for the Congress and TDP and ADMK sealed the fate of NDA. The Congress and Allies got 217 seats while BJP and its Allies (Shiv Sena, JD(U), SAD, BJD, ADMK, TDP and Trinamool) got 185. The Table of Party wise position is given in the Annexure –A (iv). One thing is clear from this type of election results that people have not given clear mandate for any party and if this trend persists in near future we will have to see more Coalition Governments.

APPRAISAL

The present phase in the evolution of the party system is noted for these features.

1. It can be seen from the tables given in the Annexure-A that, at any given time, we have had a large number of parties present in the Lok Sabha. It can not be said that all of these parties are formed along the ideological lines or they represent different policies and approaches to the nation's economic or socio political problems. Except for the CPI and the CPI (M), all of the above parties believe in the market economy and can be considered as on Right of the Centre. These parties do not differ on economic or socio-political issues. The Election Commission has recognized only six parties as National Parties. The real difference between these parties is that many of State parties represent interests of different groups based on caste, religion or region. The sole objective of existence of these parties is to advance the interest of the community or the region they represent. These parties do not have any national perspective.

2. The general trend amongst both, the national and regional parties to move away from the strict ideological framework of the party of the left or the right. Although in general, they do profess to stick to their party ideology or at least are known by certain ideological labels. But in their actual programmatic support they are not reluctant to give up their ideological instance, if that helps gain them a share of political power. Then, we have many parties which do not have any ideological base and they also do not represent any particular caste, class or religion. These parties are basically alter egos of their leaders. The genesis of such parties can be traced to the hurt ego or frustrated ambitions of their leader. Often these parties are one man force. A large number of 'samajwadi' parties illustrate this very clearly.
3. Though the ideological foundations were always missing in the case of a large number of our political parties, the opportunistic shifts have become more blatant in the present age of coalition governments. Parties which are ideologically poles apart, come together and strike alliances. Thus we can explain the Congress and the CPI (M) joining hands at the centre though in the states, the two parties are fighting each other tooth and nail or DMK joining the Congress in fourteen Lok Sabha while Congress topple down I.K. Gujral's United Front Government in Eleventh Lok Sabha asking for DMK Ministers. We also see the expelled members of one party being happily embraced by the rival party, making a mockery of the party discipline and ethics.
4. This naked opportunism of our political classes made the functioning of the parliamentary democracy meaningless. The electorate votes a party on the basis of its declared programme, but once elected, the party goes to implement opposite of what it had promised during the election. Such trend has been witnessed both at the national as well as at the State level and parties are less inhibited to share power in government

formation with the groups, who till the other day were their bitter political opponents. In Kerala and the West Bengal, the CPI (M) and the Congress fight elections against each other, but once elected, both are seen on the same side in the Parliament. We have seen the self declared champions of secularism like Shri George Fernandes joining hands in the government with strong Hindutvavadi parties like the Shiv Sena. There is so much of double talk and hypocrisy in our political life that it is impossible for a man to find out as to which party stands for what. Except for their own interest, the parties seem to forget and ignore all other commitments they make during the elections.

5. The lack of strong and consistent political affiliations on the part of our leaders, and a fast turnover of small parties have led to the voter confusion and apathy for the political activity. Today a cynicism has spread over the general public, particularly the elite class has become so much apprehensive of the politicians that they shun the very political activity. This is very bad omen for our democracy. It is common knowledge that very few educated and economically advanced people go to cast their vote. Thus our democracy is fast turning into monocracy.

3.1.3 CONSTITUTIONAL AND LEGAL POSITION

Political parties do not find any direct mention in the Constitution of India. However, the Tenth Schedule (which was added by the 52nd Constitutional Amendment Act, 1985) of the Constitution deals with the disqualification of a person for being a member of either House of Parliament [Art. 102(2)] or the Legislative Assembly or Legislative Council of a State [Art. 191(2)], on ground of defection. These articles are relevant to the functioning of political parties.

In the absence of adequate constitutional provisions, the onus of framing and administering the rules and regulations governing

political parties in India has fallen on the Election Commission. The Election Commission of India has the ultimate power to accord recognition and status to political parties. The Election Commission has the power to decide whether or not to register an association or body of individuals as a political party.

According to Article 29A (1) and (2) of the Representation of Peoples act, 1951 it is mandatory for any association or body of individuals of India calling itself a political party to make an application to the Election Commission for its registration as a political party, within thirty days from the date of its formation.

Article 29A (5) requires that the application shall be accompanied by a copy of the memorandum or rules and regulations of the association or body and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India, and to the principles of socialism, secularism and democracy and would uphold the sovereignty, unity and integrity and unity of India.

And proviso to Sub-section (7) of Section 29A provides that no association or body shall be registered as a political party under this Section unless the memorandum or rules and regulations of such association or body conform to these provisions, i.e. the provisions of Sub-section (5) of Section 29A.

The decision of the Commission in this matter is final.

3.3.1. Provisions for Recognition

According to Para 2 (h) of the Election Symbols (Reservation and Allotment) order 1968, 'Political party' means an association or body of individual citizens of India registered with the Election Commission of India as a political party under Section 29A of the R. P. Act of 1951.

As per paragraph 6A of the Election Symbols (Reservation and Allotment) Order, 1968, as amended, a political party shall be treated as a recognized National party, if, and only if, -

1. Either the candidates set up by it, in any four or more States, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in their respective States at that general election; and (ii) in addition, it has returned at least four members to the House of the People at the aforesaid last general election from any State or States;
2. Or its candidates have been elected to the House of the People, at the last general election to that House, from at least two percent of the total number of parliamentary constituencies in India, and (ii) the said candidates have been elected to that House from not less than three States.

According to paragraph 6B of the aforesaid Order, a political party, other than a National party, shall be treated as a recognized State party in a State or States, if, and only if, -

1. Either the candidates set up by it, at the last general election to the House of the People, or to the Legislative Assembly of the State concerned, have secured not less than six percent of the total valid votes polled in that State at that general election; and (ii) in addition, it has returned at least two members to the Legislative Assembly of the State at the last general election to that Assembly;
2. Or wins at least three percent of the total number of seats in the Legislative Assembly of the State, or at least three seats in the Assembly, whichever is more, at the aforesaid general election.

According to para 6C of the said Order if a political party is recognized as a National party under paragraph 6A, or as a State party under paragraph 6B, the question whether it shall continue to be so recognized after any subsequent general election to the House of the People or, as the case may be, to the

Legislative Assembly of the State concerned, shall be dependent upon the fulfillment by it of the conditions specified in the said paragraphs on the results of that general election.

The recognized political parties are accorded the status of a National or State political party in accordance with the provisions of Election Symbols (Reservation and Allotment) Order, 1968. The number of National parties has been varying from 14 to 4 owing to continuous review of the status based on the performance of the parties. In 1951 there were 14 National parties while presently there are 7 National political parties. The number of National parties was: in 1957 (4), 1971(8), 1977(5), 1980(6), 1984(7), 1989 (8), 1991 (9), 1996 (8), 1998, 1999 (7) and 2004 (7). Annexure –A (xvi) shows the number of recognized national parties and state parties. There were no National parties in 1962 and 1967. These were at that time called multi-State parties.¹

It may be noted that political parties in India are also sometimes categorized by academics and political analysts on the basis of their territorial or geographical representation, e.g. All India parties, Regional parties and Local parties. This is done by them only as a matter of convenience or identifies them in a particular way, and does not reflect either any official party classification recognized by the Government or by the Election Commission. Similarly any identification of a party on the basis of its ideological orientation as a party of the left, right, center, socialist, communist, communalist etc. bears no official recognition.

The two major categories of political parties in India are National and State. As of today, there are six national parties and 38 regional parties recognized as such by the Election Commission of India. The National parties are Indian National Congress, Bharatiya Janata

¹ State and Politics in India, edited by Partha Chatterjee, Oxford,delhi 1997,page-93.

Party, Communist Party of India, Communist Party of India (Marxist), Bahujan Samaj Party, and Janata Dal (split in the Janata Dal in August 1999).

3.3.2. Provision Relating to De-recognition

Section 29A of R. P. Act, 1951 makes it mandatory for the political parties to provide specifically in their constitutions that they bear true faith and allegiance to the principles of secularism, socialism, and democracy besides to the Constitution of India, to get registration by the Election Commission. When Election Commission finds later that a party had obtained its registration through fraudulent means or a party is declared by the Government as unlawful, Commission can de-register a party. It could also be de-registered if the party itself intimated the Commission that it had ceased to function or had changed its party constitution, or that it would not function in accordance with the provisions of the law. **However, the sanctity of the provision is diluted by the fact that the parties who do not subscribe to secularism, socialism and democracy would be denied registration but they can contest election. Also the Election Commission has held that a political party duly registered under the R. P. Act, 1951 cannot be de-registered by the Commission on the allegation that the party had violated the law or has ceased to function in accordance with the undertaking that it would abide by the principles of secularism.**

As per the latest notification (June 29, 2000) the Election Commission has decided to de-recognize seven regional parties in some States based on their poll performance. These are Haryana Vikas Party, NTR-TDP (Lakshmi Parvati), Rashtriya Janata Dal in Manipur, Shiv Sena in Dadar, Nagar and Haveli, United Minority Party in Assam, Samajwadi Janata Party in Chandigarh and Samta Party in Haryana.

3. 1.4. PROBLEM IN THE STYLE OF FUNCTIONING OF THE POLITICAL PARTIES

3.4.1 Absence of Inner Party Democracy:

Over the last fifty five years, no political party has been able to observe the basic norms of inner party democracy. The authority in organizational matters has always been from the top to the bottom through successive layers of party structures. Leaders of political parties have not always emerged through a process of democratic elections and promotion from the lower levels to the higher and the top. Highly integrated party structures create rifts between party organizations. Party disintegration takes place due to over centralization and personal ego that reduces the party to the status of a regional party. Strong leaders with support from their States have been by-passed in favour of loyalists. The party Presidents appoints party Chiefs in the States just before the organizational elections were to take place despite the protests of the central election authority chairmen. Even when the elections to State party chiefs take place after a long gap, only the President of the party nominate a majority of the State party chiefs. These trends are likely to affect the party's strength and capability. A party is a public institution, not a personal fief. Without intra-party elections, without ministers who enjoy strong regional support, and without the encouragement of a variety of opinions, political parties are like to wither away.

3.4.2. Need for Funds:

To perform various functions and contest elections in an effective manner, every political party requires huge funds. But the financial matters of party are kept secret while other aspects of organization are known to people. Very little is known about finances of political parties. In fact, secrecy is maintained even within a party. Only a few leaders at the higher level know the truth about the total funds and expenditure. Parties do not publish statements of accounts, income and expenditure, though financial matters are discussed at

conventions and conferences or in meetings of higher bodies like working committee or the executive committee. Many political parties and candidates use dubious methods in raising funds, like kickbacks, funds from foreign countries and even from donations by mafia gangs and other non-desirable elements. How to let the parties get honest funding from legitimate sources for their basic and continuing political activities has emerged as one of the most crucial contemporary concerns in respect of the functioning of political parties in India. The need to ensure accounting and auditing of party finances at various levels of party organization has been stressed by many. Transparent sources of party finances are a must.

3.4.3. Lack of Ideology and Values in Politics:

Party dynamics in India has led to the emergence of valueless politics. Gandhiji taught us tremendous selflessness, self sacrifice and service to the people, such inspirational values, the democratic norms and institutions have been destroyed over the last fifty five years of the working of the Constitution. The politicians and political parties have lost their credibility. There seems to be a crisis of character amongst the politicians, as the system does not encourage the honest leader. Because of the falling moral standards both in the public and among the leaders, criminalisation of politics and politicization of criminals has become the norm. Due to degeneration of leadership, parties have been entangled in power struggle for the sake of personal ends. There has been very sharp erosion in the ideological orientation of political parties

Astronomical sums of tainted money have come to play an important role both in the pre and post-election scenario. The entry of criminal elements within the folds of political parties and later their elevation to executive positions of ministers have resulted in an environment of declining moral standards of public life and the emergence of valueless politics for personal gains. Unfortunately this trend has penetrated to all walks of public life and no political leader or political

party seems to care for value-based politics and upholding of moral standards. The Gandhian value of the spirit of service to the nation has become completely extinct from the present day politics. The importance and claim to high office of a politician being measured not in terms of what he can contribute to the state or public but the size of the funds he can covertly raise and the necessary 'criminal' power to win elections he can provide. The older political leadership had risen from the ranks. The rise was not sudden, and their adherence and commitment to party ideals and ideology was unflinching. They respected party discipline. The present day political leadership seems to be in a tremendous hurry to reach up to the top, and is not averse to use short cuts, dubious methods, money or muscle power to achieve their objective. The entry of the toughs and persons with criminal background to the legislature is a very serious consequence of these trends.

Aggressive instance to disrupt or withhold the proceedings of the legislature for days on thereby causing a tremendous drain on the public exchequer and the valuable time of the House is common nowadays. The result is that the more important issues facing the nation do not get discussed or passed and policy making and the process of good governance suffer.

3.4.4. Regionalism:

The regionalisation of political parties has compelled many of the parties to orient their highly centralized organization and decision-making structure to suit the new demands of party at the state level, thus adopting a confederation like approach for the party organization. This has resulted in a lesser assertion of national control over state units. Our Federal system of Government helps in creating regional political centers which provide opportunity for regional political patronage. Federal system makes it possible for a regional party to gain power and force its way to the party system while giving them capacity to govern. But these regional interests have a limited

area to fight and generally clash with national interest. Regionalism and regional parties have made 'ethnicity' acquire a growing respectability at home and abroad.

Most important is national politics has now entered a coalition phase, regional parties are being grouped together to provide a working majority at the center. At the same time, differences in the economic, educational and social interests of regional middle classes, intermediate castes and the new classes are bound to overwhelm the unifying capacity of regional pride.

3.4.5 Casteism:

Social structure in India is based on cast system. Interrelationship of casteism and politics has posed a great problem nowadays. During the struggle for freedom people of all castes, cults and sects stood against the British Empire like one man. However, after independence these loyalties were divided in to castes and communities. Post independence politics encouraged people to go in divergent directions. The castes, which had somewhat gone underground by the efforts of social reformers during the years of freedom struggle, was revived with all its evil force. In a society on which various communities are considered as important organisations, it is quite natural for political parties to strengthen themselves through these communities. People of different caste and communities make efforts to achieve political benefits. All parties have played a vital role in creating this situation. Minority castes have shown the tendency to be united against majority castes. This is a good sign that they are becoming conscious of their rights but practically this is again a betrayal of their support. Power hungrys are not concerned with their upliftment but taking their advantage as a vote bank.

Political parties have a lot to contribute to the revival of casteism just to capture power. We can take examples of Bihar and Tamilnadu. The political parties have always thought of casteism as a determinant in election. They have made no hitch in choosing a candidate with

reference to the caste composition of the electorate. The election strategy has the caste as the most important consideration to win the election. Unfortunately, the parties win elections quite frequently on caste calculations. They form the government and rule over the country for five years. During their tenure, the representatives are busy in building up a background for the next election rather than improving the condition of the people. Keeping in view the future election some political and administrative decisions are taken to please the people of a particular caste. This tendency has rapidly increased during the past fifty years. It has disappointed the non-partisan voter. It has intensified partisanship and sectional interests. It is intolerable in the democratic system if persons having no caste background are denied opportunities in political, administrative and judicial fields. This tendency has proved to be disastrous for the system we have adopted hoping for equal share in power. It is a deliberate effort to go against the very basic tenets of democracy.

Caste, which Nehru abhorred and believed would disappear from the social metrics of modern India, has not merely survived, but has become an instrument for political mobilisation. In terms of political identity, it became more important to be a 'backward caste' Yadav, a 'tribal' Bodo or a sectarian Muslim than to be an Indian. Moreover, every group claimed a larger share of a national economic pie that had long since stopped growing.

The emergence of regional parties and the 'withering away of national outlook and spirit' thus set off another crisis. Candidates come to be selected not in terms of accomplishments, ability and merit but on the appendages of caste, creed and community. Ultimately caste becomes the deciding factor on selection. When 'disparate' political groups with caste-based ideologies compete for space in governance, national goals take a back seat. The more serious repercussion of this development is the political violence that has resulted in many parts of the country, particularly in Bihar, where dominating caste groups openly clash

with minority groups resulting in a spate of caste-wars and massacres of innocent people. One caste, in its attempt to obtain political power is committing aggression on the other. The talk of minority interests (especially of a community only) by regional parties is only a smoke-screen to hide caste and regional interests. Caste based politics and casteism are eroding the 'unity' principle in the name of regional autonomy.

Although there is hardly any instance in India of a political party being totally identified with any particular caste group, yet there are cases of certain castes lending strong support to particular political parties. Thus while political parties struggle among themselves to win different caste groups in their favour by making offers to them, caste groups too try to pressurize parties to choose its members for candidature in elections. If the caste group is dominant and the political party is an important one, this interaction is all the more prominent. In many political parties, in place of ideological polarization there occurs the determination of policies and programmes as well as the nomination of electoral candidates and the extension of support to them on caste consideration. Caste exercises its impact in the political field by specific caste groups coming together to vote *en bloc* for a candidate of their own caste, without considering the merits and demerits of the candidate, by appointing the members of influential caste or caste group or groups in the party as well as in the constituency and to offices of profits. A caste, wishing to exercise political power must have a considerable number of its members elected. This involves putting pressure on some particular party and different castes struggling against each other in a bid to have a majority of their caste candidates elected. The electoral field witnesses both competition as well as alliances between various caste groups in order to get a substantial number of their caste-men elected. Caste, therefore dominates the political field, especially at the lower level.



3.4.5 Communalism:

Next to casteism but no less serious is the problem of communalism or the projection into politics and administration of the tensions, animosities and prejudices subsisting principally between Hindus and Muslims, often finding ugly expression in violence and disturbances at the slightest of pretext or the flimsiest of excuse. Hindi-Muslim antagonism is a legacy of the British rule. Initiated and fostered by the Imperial policy of “divide and rule”.

Communalism, the logical corollary to the above has played havoc in Indian society. Modern thinkers and leaders like Gandhi, Nehru, Abdul Kalam Azad etc. tried hard to efface the effect of communalism from Indian society even before independence but somehow this formidable task for a democratic society remained incomplete. The Indian National Congress and Muslim league could not reconcile on any ground. As a result the dawn of independence witness a sensational bloodshed in communal riots in which thousands of people were ruthlessly slain, hundreds were crippled and a large number of innocent children who did not know the meaning of communal riot or Independence, became orphaned and starved to death. Collins and Lappierre have narrated many such shocking incidences in his book 'Freedom at Midnight'. All these events have created caste as well as community consciousness which hampers the healthy political culture and democratic traditions from growth. For this, political leaders by and large, are to be blamed. Now that matter has come to such a pass that political parties, in order to avoid accountability, have started blaming other parties as “communal” especially BJP. We see a sort of polarisation of the political forces- on the one side we have the so called secular parties such as Congress, the Left parties, the R.J.D. etc and on the other side are the B.J.P. and its allies. What an irony is it that many of the parties which have economic and social interest of a particular community as its objective (i.e. the Indian Muslim League), today claim to be secular and non communal while they have virtually no ideology for the nation as a

whole. It needs no further elaboration as the facts speak for themselves. Tomorrow the situation may be repeated with more evil effects. Communalism has created such deep scars that the processes of adjustment and accommodation between the two major communities have had a mixed records of successes and failures, and the twin tendencies of differentiation and integration so necessary for nation building have not been able to operate effectively and successfully at all times and in all places. Now it has reached such an extent that the minority community alleges that even 'men in uniform' have a bias in favour of the majority community. The police and civil bureaucracy involved in maintaining law and order have been perceived as anti-minority while dealing with situations of social conflicts. The **Srikrishna Report** on the Mumbai riots clearly identified important police officials who acted very aggressively as partisan Hindus while performing their public duties. These facts and observations bring in to sharp focus the important issue of the ongoing process of communalisation of the apparatus and functionaries of the Indian State. How can 'secularism', be safe in the hands of state functionaries who are practitioners of religion-based communalism? Western democracies have brought the issue of 'race' into public discourse but we feel shy about discussing the ongoing communalism of society, polity and the bureaucracy.

The partition of the former united India in 1947 in two independent nations had its origin in the forces of communalism that swept the sub-continent during the first half of the last century. Despite the emergence of India as a 'secular' state, the politics of communalism and religious fundamentalism in the post independence period has led to a number of separate movements in various states and regions of the country. Communal polarization, rather multi-polarization, has posed a threat to the Indian political ethos of pluralism, parliamentarianism and federalism. Despite the adoption of the principle of 'secularism' as a constitutional creed, the trend towards

communalism and fundamentalism in Indian politics has been growing day by day. The spirit of tolerance that is essential for a 'secular' society seems to have completely vanished from the body politic of India. The covert communalism practiced by every political party, in pursuit of electoral politics and vote banks has earned it the epitaph of 'pseudo-secularism' or 'minorityism'. The dynamics of national and state politics of the last decade is a mute witness of the clashes and conflicts between the so-called 'secularist' and the 'communalist'. Although a comprehensive constitutional amendment Bill (80th Amendment Bill) and Representation of the People (Amendment) Bill 1993 were introduced to de-link politics from communalism, casteism, and linguism etc. by the minority Government, these could not pass through the Parliament.

Caste and religion have in recent years emerged as rallying points to gain electoral support. Unfortunately there is a tendency to play upon caste and religious sentiments and field candidates in elections with an eagle eye on the caste equations and communal configurations. Exploiting caste sentiments and playing off one caste combination against the other with a political axe to grind, perhaps even more than religious bigotry is the very anti-thesis of rationalism, but the monster of casteism has all of a sudden mysteriously gained wide respectability as a means of empowerment of the subaltern India! Some politicians, well known for their 'communally sensitive' disposition, taking a cue from communalism have gone to the extent of demanding a 'fair' representation of the minorities in the bureaucracy, police and para-military forces.²

3.4.5 Criminalisation:

Although the influence of muscle power in Indian politics has long been a fact of political life since the First General Elections of 1952, when some feeble allegations were made about the use of outlaws by the politicians to further their electoral prospects, the intensity and

² S.K.Jha 'Politics India', 1998.

frequency of such allegations, have increased in more recent times, and the criminalisation of politics and the persons known to have criminal past becoming legislators and ministers has not only become very common but is being openly defended by the party leaders. A stage has now reached when the politicians openly boast of their criminal connections. A Bihar minister's statement in the Assembly that he patronized and would continue to patronize gangsters to fight and win elections is a pointer to the growing phenomena where criminal background has become an invisible requisite to win elections. Proportions of criminals and history sheeters in the legislative assemblies of the country have been increasing from election to election. There have been instances in which criminal charges have actually been pending against Chief or other Ministers in the office. There is no shortage of decent, honorable honest, public spirited and highly competent people in the country; but the constitutional system is such that it makes it almost impossible for them to enter political life. Even the law enforcement agencies are not free from the influence of the criminal –political nexus and anti-social elements. There is a lot of self-deception in the tall talk about eliminating muscle power. The Indian society, fractured by castes, sects, communities, ethnic and linguistic groups, has not developed a sense of fairness and justice. Men who would normally regard theft as an odious crime, do not mind stealing or looting the votes given to citizens by the Constitution if this stealing - variously called as booth capturing, impersonation, stamping of ballots etc – helps their caste or community or party candidate to win the elections.

According to the Election Commissioner, G.V.G.Krishnamurthi, as many as 700 of the 4000-odd M.L.A. are 'history sheeters'. Forty of our M.P.s also belongs to this category. In the Lok Sabha election, 1500 of the 13952 contestants in nine states were persons with

criminal records.³ These persons have cases of murder, dacoity, rape, theft and extortion. Many of such persons with criminal records have even got ministerial birth after winning the elections.

If 'winnability' is all that matters in elections, and if a "criminal background" is an essential requirement to win, then why don't the leaders of political parties simply enter jails, search for hardened criminals and reward them with tickets to contest elections? If entry in to jails is embarrassing, then the party high command can either hire criminals to do the job for them, or simply provide tickets to their kith and kin. That way all candidates, end up becoming "winnable" in one stroke, with both money and muscle power ensured. The modal code of conduct has had little impact on the increasing criminalisation of politics, despite the fact that there is a political consensus on keeping criminals out. The present Union Agriculture Minister Nitish Kumar, has secured the support of allegedly hardened criminals, colorful characters like Surbhajan Singh, Rajan Tiwari and Dumal Singh. Earlier U.P. Chief Minister, Rajnath Singh had fielded a certain Kamlesh, for the post of Etah district panchayat chief. She happens to be the wife of Avadhpal Singh, who along with his father, is an accused in 42 criminal cases. This is the same Rajnath Singh who had, after having been installed as Chief Minister, gone on record to state that he would wipe out all law and order problems within a fortnight. And his action suggested that what has actually meant was wiping out law and order itself.⁴

The horrible scene on Oct 21, 1997 in the U.P. Vidhan Sabha during the confidence motion, is proof of the fact that the House is activated by leadership based on tactics, not by democratic ideals. In the Vidhan Sabha, it was reported that the ruling combination of the B.S.P. and the B.J.P. had 32 M.L.A.s with criminal records of whom

³ B.L.Hansaria, Does India Need a New Constitution, 1998, p.53.

⁴ from The New Indian Express.

15 were history sheeters. And their were criminal who enable politician to win the election and in turn to get protection from him. The roles have now reversed. It is the politician now, who seeks protection from the criminals. The latter seek direct access to power and become legislators and ministers. The Election Commission's observations that nearly 40 members of the 11th Lok Sabha and 700 members of the state assemblies had a criminal past prove this. The Election Commission's requirement that prospective candidates file an affidavit listing the criminal charges that they face had hardly made any dent on the growing criminalisation of politics. Some radical reform in the existing structure of law needs to be taken urgently. Until this is done, political parties could have taken certain initiative in curbing this trend that is by refusing tickets to politicians with a criminal background. Far from it, the party leaders invariably seek out those candidates for party tickets, who can, not only win elections themselves, but can also help other party candidates to win, irrespective of their past criminal history or background.

The Election Commission is powerless in preventing criminals from contesting the elections. The Representation of People Act allows it to debar candidates convicted of certain crimes, but it cannot stop those under trial, or whose appeals from their earlier convictions are pending for disposal before the higher judiciary for multiple murders or rape, or corruption or theft from the public exchequer, from sitting in the country's highest legislative forums. There have been a number of cases where persons under trial have contested elections, while being lodged in jail, and have won. Unfortunately no political party has taken any concrete steps to curb this menace.

3.4.8. Growing Violence:

The growth of political parties and emergence of various political groups in India has brought into focus very disturbing and serious



phenomena in the body politic of India. There are some sections of the population and highly organized political groups and parties, who do not like to remain within the orbit of the Indian Constitution and work outside the existing political apparatus and party norms, and in the process, have taken to political violence and terrorism in a big way, as the only method for political participation. This has not only spread panic amongst the general population in some areas of the country, but people seem to have lost confidence in the efficacy of government in ensuring security for the general populace. Criminals now call the shots. They dictate and the Governments obey. Whether it is the hijackers of a plane or kidnappers, their writ runs supreme.

3.4.9. Fractionalization and coalitions:

A spate of minority and coalition governments at the Center due to the fragmentation of the party system has laid uncertainty and instability of governments. Groupism has become the bane of most political parties in India. Group conflicts in the Congress and Janata Party has created many parties. Annexure A (xvii-a) and (xvii-b) shows how many parties are created out of the Congress and Janata Party. These splits in the parties were perhaps the ideological conflicts within the party but those ideological issues are done away with when it comes to the sharing of power.

Efforts were made by the coalition partners or allying parties to establish some sort of institutional mechanism to evolve a consensus on the minimum governmental programme for action and to affect coordination between the different constituents of the government both vertically as well as horizontally. These efforts remained merely *ad hoc* in nature and did not quite result in the establishment of some effective permanent institutional devices to bring about a rapprochement amongst the coalescing partners. The last Government's efforts were not quite successful and new Government is yet to be tested.

A significant impact of the trend towards coalition governments in India has been its effect on the policy outcomes. A generic characteristic of the public policies adopted in India over the last decade is the short time horizons embodied in them as most coalitions of party system are committed to providing short term benefits to their constituents. One important facet of this is the well known crisis of public finance plaguing most state governments in India, in particular the larger states.

3.4.10. Training of Members

Training and orientation of new members is one of the important functions of political parties. The parties which are organized on the model of cadre party systematically develop appropriate agencies of training for members. But most Indian parties, except for the Communist parties and the BJP have not followed this model. Parties in India do not have a permanent system of training of their members, and whatever arrangements for training are done on ad-hoc basis by national or state level organization.

3.4.11. Campaign methods:

The campaign methods used by parties in the days of electronic media, high-tech advertisement, projecting images through the glamour of models and the film / TV idols have taken away the element of serenity and the spirit of public service from the political leadership. The election campaigns both at the regional and national levels these days have become kinds of stage shows in which the Cine Stars are paraded to attract voters in support of their candidates by the rival parties without seriously discussing or educating the electorate about the issues at stake in the election. The Election Commission of India has prescribed the Model Code of Conduct which has to be adhered to by all the candidates and the political parties, applicable to Lok sabha as well as assembly elections throughout the country. But in practice, as we have seen in the recent elections of May 2004 these are not religiously followed.

3. 1.5. SOME AREAS OF SERIOUS CONCERN

The present phase of the evolution of parties in India has revealed a number of gray areas of party functioning having serious repercussions for the political system, policy issues and process of governance. The party's manifestos, which are supposed to provide an indication of the direction of policy perspectives, have in most cases become a set of promises, something for everybody so that more votes can be gathered. Most party manifestoes have ignored the burning policy issues like population growth, pollution, rising prices, illiteracy, unemployment, and the integrity and security of the nation. It is time that these deficiencies are sought to overcome if the country is to maintain a semblance of continued economic progress with stable democratic framework of government.

The fractionalization makes the possibility of a single party securing an overall majority in the Lok Sabha in the near future very remote. The lack of disruption that increased ineffective parties at national

level have had on state contests indicates that the growth of one party has been evenly matched by the decline of another. The transformation in the composition of parties at state level has been almost seamless. In this instance, it is regional parties that have prospered and the national parties, like the Congress, have suffered.

Thus we are left in a position where politics only makes sense at the state level. A reversal of this situation is not likely to happen overnight, and any move towards fewer effective parties at national level is only likely to happen at the cost of an increased fractionalization at state level. It would, therefore, seem that the major issue of facing any party that hopes to form a government at the Union level is not how to win an overall majority, but how to form strong and secure inter-state alliances.

Today, the regional political parties have come to play a very effective role in the formation and deformation of governments leading to political instability and frequent elections. However, there is a need to conceptualize the role of regional political parties in a democracy like India. The regional parties come into power because of some popular stand that they take up on some local issues. The national political parties have aligned with them for political reasons without commitment in detail to every thing that regional parties may profess. But a problem continues in the relationship between national and regional parties as a national party has to cater to national issues and causes which should naturally admit of no regional barriers; while regional parties by their very nature have to take up only local issues. Hence, the national party too tends to become 'regional' as it adopts a regional platform.

The manner in which political parties in India are increasingly becoming anarchical in both their behavioural norms and functions suggests that too much compromise for staying in power would result

in bad governance. If members of parliament and State Assemblies themselves become rowdy in their behaviour as is demonstrated by frequent walkouts, sit ins into the well of the house, installing the proceedings of the house on filmsical grounds for days on and on without regard to the staggering financial burden that it is causing to the public exchequer, apart from the precious waste of time and energy of the political elites, breaking furniture, communication equipment, using these as weapons to beat and hurt the opponents within the precincts of the house, prompting the Speaker to frequently remark that it was "a mindless mockery of the people who have returned us to Parliament", it is shameful not only to the people of India but also to those who look upon Indian democracy for inspiration. The politics of splits, defection, violence and 'subterfuge' has taken over the governance of the country thus showing no deference to norms, rules and procedures. Such trends are likely to be routine affairs if parties continue to stoop too low for grabbing power by force or by foul means.

In the background of the foregoing analysis of the functioning of the party system in India, it is evident that the parties in India face a number of challenges. Not only they have declined in terms of their ideological orientations and commitment to the welfare of the masses, but in the recent past they have shown tendencies of factionalism, doggedness in terms of opposition for opposition sake, and agitation politics. At times they have displayed behavior, which tends to be unprincipled and unconcerned for the welfare of the masses. Many of their leaders have been affected by communalism, caste, community or religious biases and have known to have links with mafia groups, criminals, senas, and militant or fundamentalist organizations. Changing of party or group loyalty is endemic in party organizations in India, and almost everyone is willing to defect at the drop of the hat, if the grass seems to be greener on the other side. Parties make and break political alliances to maintain their influence within the party

and government, and to remain in power with the aim to keep the rivals out. Most of these factional groups are non-ideological and have neither vision of the good of the people nor any capability to govern or undertake party responsibilities.

The political parties in India face organizational problems in regard to discipline, defections, intra-party organizations, elections within the parties, and splits in the party. Raising of adequate funds for party organizations and activities by legitimate means and their appropriate and effective utilization during non-election and election periods is a perennial problem. Criminalisation of politics and politicization of criminals and the maintenance of public ethics is another area of concern in respect of party functioning.

Thus in the perspective of the evolution of political parties in India during the last fifty years as described above, the following are some of the areas of reform which should be of immediate concern and these areas are not only recognized by NCRWC but felt by all political observers and analysts, scholars and academicians :

The following are some of the areas in crying need of reforms.

1. Institutionalization of Political Parties - Need for a Comprehensive Legislation to regulate party activities. Criteria for Registration as a National or State Party - De-recognition of Parties.
2. Structural and organizational Reforms - Party organizations - National, State and local levels - Inner Party democracy - Regular Party Elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
3. Problems of Party Funding -Need for a Legislation to regulate party funds - distribution and spending of party funds during non-election and election times.

4. Maintenance of Regular Accounts by the Political Parties- Auditing and publishing – making audited accounts available for open inspection.
5. Party system and Electoral system - To what extent and in what way the electoral system could be reformed so as to pave the way for the establishment of stable governments based on the concept of two party system or dual party alliance system - Do we need to change the system of single member constituencies to a mixed system or a proportional method of representation along with the simple majority system?
6. Steps to check criminalisation of political parties.
7. Steps to curb the role of casteism and communalism.
8. Problem of proliferation of independent candidates.
9. Strengthening of Anti-Defection Measures- Amendments in Anti- defection Law
10. Party system and governance - How to make parties as viable instruments for good governance?
11. Restoration of values and morality in public life.

3.1.6. EFFORTS MADE TO REFORM THE PARTY SYSTEM

A number of academic and research Institutions, political observers and analysts, Committees and Commissions appointed by the Government of India from time to time to make efforts in this direction. A number of proposals for reforms in the party system in India have been made by them. Some of the most significant of these are given here.

3.6.1. V. M. Tarakunde Committee (1974-75)

The Tarakunde Committee on Electoral Reforms was appointed by Jayaprakash Narayan on behalf of the Citizens of Democracy, an independent organization. An important recommendation of this committee was that there should be a law requiring all recognized political parties to keep audited accounts and sources of all income

and details of expenditure, with false accounts being a punishable offence.

3.6.2 Dinesh Goswami Committee (1990)

The main recommendations of the Committee were as follows:

1. A three-member election commission and appointment of the Chief Election commissioner in consultation with the Chief Justice of India and the leader of the opposition and the appointment of other Election commissioners in consultation with CEC;
2. A fresh de-limitation of the constituencies on the basis of 1981 census and rotation of seats reserved for SCs and STs;
3. Issuing of multi-purpose photo identity cards to voters;
4. Prohibiting candidates from contesting elections in more than two constituencies;
5. The raising of security deposits of independent candidates and forfeiture of security deposits of all candidates failing to secure at least $\frac{1}{4}$ th of the votes polled;
6. A statutory status to be given to the model code of conduct formulated by the Election Commission;
7. Introduction of electronic voting machine;
8. legislative measures against booth-capturing, rigging and intimidation of voters;
9. limited state-funding in kind to recognized political parties, to begin with;
10. Transportation of voters, carrying of fire arms, sale and distribution of liquor on poll day to be cognizable electoral offence in law;
11. Restriction of disqualification under the anti-defection law to voluntary resignation and violation of party whips only in cases of vote of confidence, money bills and vote of thanks to the President;

12. A review of the electoral system by a standing Committee of the Parliament and by an expert Committee.

Chapter 5 of the Goswami Committee Report also made some recommendations relating to political parties and candidates. The main reform proposed was the deletion of Section 29(A) of the RP Act concerning registration of parties. The matter, instead should be delegated to be solely decided by the Election Commission under the Election Symbols (Reservation and Allotment) Act, 1968. The Committee did not feel the necessity for recognizing electoral alliances of political parties or changing present procedure of allotment of symbols.

3.6.3. Justice V. R. Krishna Iyer Committee (1994)

The J. Iyer Committee recommended that a law should ensure inner-party democracy in all political parties. It also reiterated a legal sanction for proper audit and accounts. Besides it proposed the institution of a Commissioner to examine and decide whether a political party was promoting communalism or in any way acting against the Constitution.

3.6.4 Law Commission's Report (1998)

The recommendations of the Law Commission could be summed up as follows:

1. Independent candidates be barred from contesting elections to the Lok Sabha and legislative assemblies.
2. Full five year term for the legislatures.
3. In order to contain defections, a “pre-poll coalition” or alliance of political parties should be treated as a “political party”.
4. Inclusion in the RPA to regulate the formation, functioning and income-expenditure accounts of political parties and to avoid their splintering and ensure internal democracy.

5. 8. Only a candidate obtaining 50 percent or more votes be declared elected, holding of “run off” elections wherever necessary.
6. 9. Any party, which receives less than five percent of the total vote in elections to the Lok Sabha and Assemblies “shall not be entitled to any seat”.
7. 10. Use of electronic voting machine.
8. 11. Restriction on frequency of “no-confidence motions”
9. 12. List system on the German model for 25% or 50% additional seats and concept of negative vote.

3.6.3 Center for Policy Research Study(Lok Raj Baral) Report (2000):⁵

This study suggested reforming the first-past-the-post system of election. It advised for examination of German model of preferential voting system for insuring proportionate representation of parties in the Parliament.

1. Since all parties work in tandem with unscrupulous business lobbies and gangsters or use state power for determining the outcome of elections, these cancerous trends need to be checked for good governance.
2. Political parties should have minimum principles for forming a coalition government rather than forge alliances only to be in government. Unprincipled political alignment should be discouraged by law urging political parties to be more homogenous in their joint endeavors of running the coalition government.
3. Support to be rendered to any government from "outside", i.e. without joining the coalition government,, should be legally barred. Only a party having at least 25 per cent seats in the Lower House of parliament or Assembly should have a chance to form the government.

⁵ Lok Raj Baral “Political Parties and Governance in South Asia” in V. A. Pai Panandikar, Problems of Governance in South Asia.

4. No government should be removed from office if the opposition parties or others involved in the toppling game fail to come out with a clear alternative arrangement and programme.
5. The kind of coalitional arrangements that the parties make should be clear before forming the government. Developments so far show that the big parties themselves prefer to play second fiddle to the regional and smaller parties whose immediate interests are determined by 'regional and parochial' issues rather than long term national programmes.
6. Parties need to strengthen their managerial and crisis management capacity. If the party organizations are better managed and democratized, their efficiency would increase. More autonomy to all layers and more inner-party democracy would help circulate leaders on the basis of their qualities. The criterion of achievement rather than ascription should be accepted by all parties. Unless parties are broad based in accommodating all segments of society, they continue to become status quoist, exclusivist, regional and sectarian.
7. Parties' own code of conduct and self-initiated reforms, rather than state-imposed reforms are likely to improve the working of parties.

3.6.6. Justice Kuldeep Singh Panel:⁶

1. To prevent criminalisation of politics, the candidates with a criminal background or those facing substantial criminal charges framed by a court be debarred from contesting elections.
2. Just as government servants facing criminal proceedings are placed under suspension until cleared by the courts, the same yardstick should be applied to politicians as well.
3. Election Commission should bring effective changes in the model code of conduct to exclude candidates from contesting elections

⁶ Taken from NCRWC Report.

who have criminal proceedings pending against them. And, if the Election Commission cannot do this, Parliament must do it.

4. More effective laws be created that will prevent criminals from entering the political process. The legal reforms can push criminals out of the system. New legal initiatives such as amendments in Section 8 of the Representation of the People Act 1951 could empower the Election Commission to deal with crime-tainted politicians.
5. If we cannot bar criminals from contesting elections until they are convicted by the courts, then the next best course would be to get speedy verdicts in their cases. Special courts and benches to try cases against legislators and other high profile people should be set up for speedy trials.

3.7 PARTY SYSTEM IN SOME OTHER COUNTRIES

The legal and constitutional position of political parties varies from country to country. In most democratic countries, however, there is neither any direct constitutional provision regulating the functioning of political parties, nor any legal sanction establishing political parties as a necessary governmental institution, although there are some governmental systems which try to prescribe some conditions for the operation of party system. A very good example is furnished by the Constitution of the Fifth French Republic, which prescribes that Parliament (The French National Assembly) cannot make a law that may abridge the right of the political parties to carry on their activities freely. This is perhaps a tacit recognition of the existence of political parties as a *sine qua non* of a democratic system. Similarly, the basic law of Germany's Constitution includes political parties in its purview. Art. 21 of the Law guarantee the legitimacy of parties and their right to exist, if they accept the principle of democratic government. The Federal Government of Germany has thoroughly institutionalized the structure of political parties, by introducing the 5% clause, which

makes it extremely difficult for minority or splinter parties to form and flourish.

The Canadian practice of Registration of Party or Party foundation is very comprehensive. Parties are registered on certain conditions and party leaders are selected through a national leadership convention composed of provincial party delegates voting as individuals rather than as a bloc.

Nepalese Constitution (Art.12) provides freedom to form union and association, which has been enshrined as a fundamental right, Art. 112 deals specifically, with the prohibition to ban political parties. Any law, arrangement or decision which allows for participation or involvement of only a single political organization or party or persons having a single political ideology in the elections or in the political system of the country shall be inconsistent with the Constitution. And there are conditions for registration of political parties for contesting elections;

- (a) They should adhere to the norms of democracy within the party,
- (b) There must be provisions for election of the office bearers in the Constitution of the party at least once every five years,
- (c) Political parties must field at least 5% women candidates for election,
- (d) Those parties which get at least three per cent of total votes cast in elections are qualified for registration as political parties.

A member of parliament cannot change his party loyalty or abandon the party of which he was a candidate at the election. If he does so, he loses his seat in the House [Art. 49, Clause (1) (f)]. However, all the parliamentarians from a party which received less than three percent of the cast votes in the election to the House of Representatives are treated as Independents.

As far as effect of federalism on party politics is concerned adverse effects are visible both in Canada and Australia. The federalization and factionalism in the party organization have their repercussions on the legislature. The legislative parties do not function as solid units

and are turned in to a collection of followers of different group leaders striving for personal gains and seeking personal ascendancy. In Australia, the loose organization of political parties and multi-party system has made the position of Australian politics very shaky. Political parties in Australia are organized on class basis and as their followings cut across state boundaries, they have minimized, if not completely eliminated, the centrifugal effects of the constitutional structure. According to Lousie Overtaker: " In spite of its federal structure and a strong sense of particularism among the member states, unified, disciplined parties with commonwealth-wide organizations developed."⁷

In Canada national leadership is never strong to be able to destroy the centrifugal forces inherent in regionally grouped national diversities. No national party in Canada can be successful unless it derives support from two or more regional areas in the Dominion and they have to reconcile the widely scattered aims and interests of a number of these areas.

In Canada, a Royal Commission on electoral Reform and Party Financing appointed by the Government of Canada in November 1989. Some of the recommendations of this Commission as well as some Canadian practice in this regard in vogue since the early years of this century may be considered for adoption in India.

The communal character of population weakened the spirit of regionalism and paved the way for a strong Centre in Malaysian polity. The federation of Malaya Agreement, 1957- like its predecessors the federation of Malaya Agreement, 1948- provides for a very powerful Centre by concentrating legislative and financial authority in the Central Government. Malaysian federalism has further strengthened the Centre. The Alliance uniting the three communal parties-the United Malay National Organisation, the Malay Chinese Association, and the Malaya Indian Congress-has been in power both at the Centre

⁷ David B.Truman,"Federalism and the Party System" in Parties and the Government al System,Ed.Garold W. Thumm and Edward Janosik,1967,page37.

and in the States ever since 1955 and 'was a major factor for political stability.'⁸

Since 1945, party Government in **America** has been the exception rather than the rule. This remarkable decline in the frequency of party Government has been accompanied by a parallel decline in party loyalty among voters and among each party's members of Congress and this decline in party loyalty is closely related to the decline in party Government. The American Constitution makes no mention of party. It was drafted when political parties were first emerging in the British Parliament. The party today has a passive mechanism which individual candidates utilize to win nomination and election. The candidate's dependence on the Party for campaign funds and career advancement has been replaced by dependence on the many single issue interest groups to whom they must turn to raise the constantly increasing amount of money needed to win and hold their seats. They now owe loyalty not to a party with a reasonably coherent view of the right mix of national policy, but to a variety of narrowly focused pressure groups with disparate and conflicting views.⁹ Americans are thinking of party reforms.

3.1.8 CONCLUSION

3.8.1. Need for a Legislation governing political parties

There is a need for a comprehensive legislation regulating the functioning of political parties in India. The legislation should provide conditions for the constitution of a political party and for recognition, registration and de-registration. The new law should prescribe not only the conditions for the establishment of the political party, but also provisions for regulating the functioning of political parties after establishment. Only those parties, which are registered under the proposed Act be allowed to contest elections.

⁸ 'Federalism and the Indian Political Parties' by Phulchand in Federal System, State Autonomy & Centre-State Relations. P.478.

⁹ Taken from 'Reforming American Government' Ed. by D.L. Robinson, 1985.

3.8. 2. Criteria for Registration and De-Registration

The law should define the criteria of registration of political parties. Every political party or a pre-poll alliance of political parties should be compulsorily registered under the proposed Act. The Registration authority can be the Election Commission of India.

The law should define the criteria and conditions for de-registration of political parties, and the decision of the Election Commission in this respect should be final,, subject to the judicial appeal to High Court/Supreme Court on points of law.

3.8.3. Structural requirements

The constitution of the parties submitted for Registration under the law should provide for a declaration to the adherence to the democratic values and norms of Constitution in their inner party organizations and adhere to the principles of secularism in the achievement of their objectives. Party should select candidates for political offices at the grass root and state level and representation to the women and weaker sections of the society should be given for contesting of polls.

3.8.4. Educational Training and Developmental Activities

Political parties should provide in their constitution provide for establishing some institutional mechanism for planning, thinking and research on crucial socio-economic issues facing the nation and educational cells for socializing their party cadres and preparing them for responsibilities of governance.

3.8.5. Leadership conventions

Indian parties should seriously consider adopting the leadership convention system to make the leadership election process more open, democratic, and federal. Second, the people will know in advance of the prospective Prime Ministerial candidates.

3.8.6. Problem of Party Funding and regulating Political Contributions

There is a need for a comprehensive legislation aimed at achieving greater and improved levels of transparency with respect to party revenues and expenditure. The issue of transparency and public disclosure is crucial to the fight against political corruption in principle this need would seem more fitting with regard to political contributions, since greater the contribution, the greater the risk of dependence and the greater the danger of corruption. Thus there is a need for greater transparency and public disclosure in respect of party funding. This can be a tool designed to avoid any wrongful influences of money in politics that might lead to corruption.

CHAPTER III-B

ANTI DEFECTION LAW

3. INTRODUCTION AND BACKGROUND OF THE ANTI-DEFECTION LAW:
 - 3.1 SCOURGE OF DEFECTION
 - 3.2 THE CHAVAN COMMITTEE REPORT
 - 3.3. ANTI-DEFECTION BILLS OF 1973 AND 1978
 - 3.2 THE CONSTITUTION[FIFTY-SECOND AMENDMENT] ACT,1985:
 - 3.2.1. OBJECTS AND REASON
 - 3.2.2. MAIN PROVISIONS OF THE ACT
 - 3.2.3. CONSTITUTIONAL VALIDITY OF THE ANTI-DEFECTION LAW
 - 3.2.4. LACUNAS AND DEFECTS IN THE ANTI-DEFECTION LAW
 - 3.2.5. WHETHER ANTI-DEFECTION LAW IS APPLICABLE TO NEWLY ELECTED M.P.S
 - 3.3. ANTI DEFECTION LAW IN SOME OTHER COUNTRIES
 - 3.4. NEED TO REFORM THE ANTI-DEFECTION LAW
 - 3.5 NCRWC'S RECOMMENDATIONS
 - 3.6. RECENT DEVELOPMENTS- 91ST AND 97TH AMENDMENTS
 - 3.7. CONCLUSION AND SUGGESTIONS

3. INTRODUCTION AND BACKGROUN OF THE ANTI-DEFECTION LAW

Political defection or floor-crossing has been a glaring feature of the Indian political system. Practice of defection is a natural adjunct of party democracy. In this sense it is as old as the party system itself. The phenomenon of defection which had started as a process of legitimate and natural polarization of social and political ideas and interests gradually turned into a method of changing political affiliations for power and financial gains.

Defection may be defined as abandonment of loyalty, duty or principle, or of one's leader or cause. According to Subhas C Kashyap political defection is change of party affiliation both from the opposition to the government side or vice-versa as also changes

between the parties on the same side of the House, i.e., between the constituent units of the coalition government or between the different parties sitting on the opposition benches.¹⁰

The recent experiments with the coalition governments at the Centre as well as in various states have shown the inefficiency of the Anti-defection Law. It became very clear that the law was safe guarding the interests of the bigger political parties at the expense of the smaller parties. There is an ever increasing demand that the law should be made much more stringent, the loopholes such as definition of split etc. should be plugged. Any elected member who wants to change his political affiliation or who wants to go against the dictate of his political party should be made to resign from his post and face the elections again explaining his change of ideas and affiliations to the voters. This only will bring in some sort of restraint on the horse trading of M.P.s and M.L.A.s and political manipulations which is seen so often after each election.

The scourge of defections has plagued the political fabric of India since the late sixties. Though it has been present in India since Independence, it began to assert itself in serious proportion only after the Fourth General Elections. The number of cases of defection in the pre 1967 years was so small that they did not make any impact on the political life of the country. Prior to 1967, defections were infrequent and shifting of political affiliations was resorted to only for honest and genuine reasons. Till then in the history of independent India, less than 500 cases of defections were reported, mostly at the state level. Most of those who left their parties were guided by their conscience and had no lure of office or power. They did not intend to get any returns for their sacrifices made during the freedom struggle. Acharya J.B.Kripalani, Narendra Dev, C. Rajgopalachari, P.D.Tandon, Ashok Mehta, Jay Prakash Narayan and many others were always guided by

¹⁰ Subhash Kashyap, Anti-Defection Law and Parliamentary Privileges, 2000.

public morality and value based political behaviour when they decided to leave the Congress party. It was only on ideological grounds, and not for other extraneous considerations.

After 1967 political defections took place on such a large scale that they posed a serious threat to the stability of the governments in a number of state. The Fourth General Elections held in 1967, did not provide the requisite majority for any political party to form governments on their own in different states. During the Fourth General Elections, Congress failed to secure clear cut majority in a number of states. The opposition saw in this development a golden opportunity to seize power and a number of political parties unmindful of their ideological differences joined hands on the basis of some minimum common programme to form the government. Such a situation provided for a fertile ground for the seeds of defection to have a luxuriant growth.

3.1. Scourge of Defection

A number of legislators denounced their allegiance to their parent organization and joined hands with other groups for the attainment of certain political gains. In the subsequent elections the game of defection assumed even more serious dimensions and the members of the States Assemblies defected en-block. As a result, there was frequent breakdown of ministries in the states, which greatly contributed to political instability.

According to Subhash Kashyap, the years 1967-72, out of 4,000 odd members of the Lok sabha and the Legislative Assemblies in the States and the Union Territories, there were nearly 2000 cases of defection and counter defection were found to have staged defections at one time or the other. By the end of March 1971 approximately 50% of Legislators had changed their party affiliations and several of

them did so more than once-some of them as many as five times.¹¹ Subsequently to the mid term poll in 1971, the practice of to and fro defections touched perilous dimensions.

In 1971, the government of Morarji Desai fell because substantial number of Lok Sabha members left the Janata Parliamentary party. During the period following the 1980 poll, defections again became quite pronounced. The governments fell in various states due to unbridled defections. Between 1967 and 1983, about 2700 defections were recorded and of these, some 15 members eventually became Chief Ministers, 212 occupied Ministerial Offices and a sizable number of them came to head various Statutory Corporations or other like Bodies.¹²

All the parties felt gravely concerned about the evils of "defection" and sought to curb it. A talk about enacting a law to ban the defections was going on since long but without much progress. The Congress Government appointed a Committee under Y.B. Chavan, the then Union Home Minister, in 1967 to consider this problem. The committee, among others consisted of Jay Prakash Narayan, H.N. Kunjru, C.K. Daftary, M.C. Setalwad, M. Kumaramangalam, Madhu Limayae, Bhupesh Gupta and Ram Subhag Singh. The Committee placed its report on 28 Feb.

3.1.2. The Chavan Committee Report:

The political parties themselves should arrive at a Code of Conduct inter alia providing against a defector being taken into the fold of another party;

A representative should be deemed to be bound to the party under whose aegis he wins the election. This follows from a clear

¹¹ Subhash Kashap- Anti-Defection Law and parliamentary Privileges, 2002.

¹² K.N. Singh-Anti-Defection Law & Judicial Review' in The Journal of Parliamentary Information, vol. XLIII, March 97(NLS).

understanding of the nature and character of representation and the duties of an elected representative.

No one who was not initially a member of the Lower House should be appointed as Prime Minister or Chief Minister and necessary constituted amendment in this regard should be given prospective effect;

Every defector should be debarred from appointment as a minister for a prescribed period or until he gets himself re-elected;

There should be a ceiling on the size of ministers both at the Centre and the State Levels;

Provision for recall may not be advisable or practicable.

3.3. The Anti-Defection Bills of 1973 and 1978.

The recommendations of the Chavan Committee on defections had a checkered history. Several attempts proved abortive. The Government introduced the Constitution (32nd Amendment) Bill, in the Lok Sabha on 16th May 1973. The Bill was referred to a joint committee of the two Houses of the Parliament. Before the committee could report back to the House, the Lok Sabha was dissolved in 1977.

The Janata government brought forth an Anti-Defection Bill in Aug.1978, but the Bill was withdrawn by leave of the House because of its failure to arrive at some understanding with the Congress party regarding the definition of defection and how to check the same.

Jammu & Kashmir was the only state legislature which attempted to tackle this problem at the State level. The Jammu & Kashmir Representation of People Act was amended and a new section 24 (g) was brought into effect from 29th September, 1979¹³.

A successful attempt to check defections was made by Rajiv Gandhi's Government through the enactment of 52nd Amendment.

¹³ Supra, I

The Tenth Schedule was inserted in the Constitution, which provided for the disqualification of elected representatives when they resort to defection, through an amendment in 1985 under peculiar circumstances. The Congress (I) led by Prime Minister Rajiv Gandhi had been swept to power in the previous year. Riding the crest of a sympathy wave following the assassination of Indira Gandhi, the party had won 401 Lok Sabha seats, an electoral record in India. Therefore the Constitution 52nd Amendment Bill, which was introduced with the apparent objective of preventing unprincipled defections and thus addressing the concerns of governments hanging on thin majorities, created ripples.

3.2. THE CONSTITUTION [FIFTY-SECOND AMENDMENT] ACT,1985

3.2.1 Objects and Reasons

The Statement of Objects and Reasons appended to the Bill stated;

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

The Bill seeks to amend the Constitution to provide that an elected member of parliament or a state legislature, who has been elected as a candidate set up by a political party and a nominated member of parliament or a State-Legislature, who is a member of a political party at the time he takes his seat or who becomes a member of a political party within six months after he takes his seat would be disqualified on the ground of

defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party. An independent Member of Parliament or a State-Legislature shall also be disqualified if he joins any political party after his election. A nominated Member of Parliament or State-Legislature who is not a member of a political party at the time of his nomination and who has not become member of any political party before expiry of six months from the date on which he takes his seat shall be disqualified after the expiry of the period of said six months. The Bill also makes suitable provisions with respect to splits in, and mergers of political parties. A special provision has been included in the Bill to enable a person who has been as a presiding officer of a house to sever his connections with his political party. The question as to whether a member of a House of Parliament or a State-Legislature has become subject to the proposed disqualification will be determined by the presiding officer of the House; where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.

3. The Bill seeks to achieve the above objects.

The Bill was passed by Lok Sabha and Rajya Sabha on 30 and 31 January, 1985, respectively and came into force with the effect from 1st March, 1985 after issue of the necessary notification in the Official Gazette.

3.2.2. Main Provisions of the Act

The Amendment Act made changes in the Article 101, 102, 190 and 191, regarding vacation of seats and disqualification from membership of Parliament and the State Legislature and added one more schedule, (schedule-X) to the Constitution setting out certain provisions as to disqualification on grounds of defection.

A Member of Parliament is disqualified if he or she voluntarily gives up the membership of a party and/or if he or she, at the time of voting in the House, acts contrary to the whip issued by his party without obtaining its prior permission or the action is not condoned by the party within 15 days from the day of voting.

However, these provisions do not apply in case of a split in the party or its merger with another party. A split is considered valid if the group splitting away consists of not less than one-third of the strength of the legislature party. In case of any merger, the move must have the backing of not less than two-thirds of the legislature party.

In Article 102, 191, clause (2) was added which prescribed an additional ground of disqualification for being a member, viz. Disqualification under schedule X. The Schedule contains provisions as to disqualification on ground of defection.

A member of a House (whether of parliament or a State legislature) belonging to any political party shall be disqualified for being a member of the house:

1.If he has voluntarily given up his membership of such political party, or

2.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 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.

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. A nominated member of a House shall,-

1. Where he is a member of any political party on the date of his nomination as such a member, be deemed to belong to such political party

2. 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. (Article 99 and 188 provide for an oath to be taken by a member).

An independent Member shall be disqualified for being a member of the House if he joins any political party after such election. 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 in the House after complying with the requirements of article 99/ 188 as may be applicable. The Schedule makes it explicit that the members who hold their seats in the House at the time of the commencement of the 52nd Amendment shall be deemed to belong to the political party for the purpose of the above disqualification which had set them up as a candidate for the election by which they became such members. Similarly members who come to the House as independent members or as nominated members shall be deemed to belong to those categories under the paragraphs of the tenth Schedule which have been given above.

Paragraph 3 and 4 provide for exception to the paragraph 2 which contains the ruler regarding the disqualification.

It provides for the eventuality of a split in a political party. If not less than one-third of the members of the Legislative party (which means the members of a political party in the Legislature) break away from the parent party, the members of such a splitting group shall not be disqualified

1. On the ground of voluntary giving up the membership of the party or

2. Of having voted or abstained from voting in such House contrary to the direction issued by such party or by any person or authority authorized by such party in that behalf without obtaining the prior permission of the party.

From the time of such split, such faction shall be deemed to be the political party to which he belongs.

Para 4 of the Schedule provides that a member of the house shall not be disqualified by para 2 of the Schedule if

1. His party has merged in another political party and he claims that he and any other members of the original party have become the members of a new political party formed by such merger or

2. That he and any other member of the original party have not become members of such political party into which others have merged.

The merger of the original party shall be deemed to have taken place, and only if, not less than two-thirds of the members of the Legislature party concerned have agreed to such merger.

Paragraph 3 and 4 use the expression "legislative party" which means a group of members in the House belonging to a political party.

Paragraph 5 protects those who are elected as 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 Assembly of a State from being disqualified if

1. He by reason of his election to such office, voluntarily gives up the membership of the political party to which he belongs 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

2.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.

Paragraph 6 provides that if any question arises as to whether a member of a house has become disqualified under this Schedule, the question shall be referred to the Chairman, or as the case may be the Speaker of such house and his decision shall be final. However if the question arises as to whether the chairman or the Speaker has become subject of such disqualification, the question shall be referred to a member of the House to be elected by the House and the decision of such a member shall be final.

Paragraph 7 bars the jurisdiction of the courts: Notwithstanding anything in this Constitution, no court has any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

In exercise of the powers conferred by paragraph 8th of the tenth schedule, the Speaker, Lok Sabha, the Chairman Rajya Sabha and the presiding officers of state legislatures framed rules for the disqualification of members on ground of defection. The rules will contain matters such as maintenance registers or other records as to the political parties, reports furnished by leaders of political parties to the Legislature as to permissions given by the party to its members to vote, admission of new members and procedures to be followed for deciding a question as to disqualification including the procedure for an inquiry which may made for that purpose.

The Tenth schedule that came to be known as the Anti- Defection Law did not implement some of the most significant **recommendations of the Chawan Committee on defections viz. those relating to (a) the Prime Minster or the Chief Minister being only from among the members of the popular house, (b) debarring every defector from being appointed a minister, and (c) putting a ceiling on the size of ministries both at the Union and the State levels.**

Right from the time of its enactment, the Anti-Defection Law was subjected to severe criticism and many loopholes were pointed out. Issues in regard to serious lacuna in the law were raised in the media, by some Members of the Parliament and by Jurists.¹⁴ Also, various modifications in law were suggested. But, perhaps it did not suit the powers that be to bring about the necessary changes or may be they felt they were helpless in the matter of amending the Constitution and in seeing the changes through.

Some of the situations that arose do not seem to have been foreseen by those who drafted the 52nd Amendment for outlawing defections. Certain provisions of the Tenth Schedule were found to be amenable to entirely different interpretations by different presiding officers created terrible uncertainty and fluidity in the application of the law and brought to limelight a number of defects. For example, in similar situations, the Speakers of Mizoram and Nagaland took opposite decisions and in both cases the Governors of the two States disagreed strongly with their Speakers. It was presumably in the light of different interpretations given in different States and by different functionaries like the Speakers and the Governors that the President himself expressed at one stage his anxiety for the democratic structure of the State if “wrong or ill-considered decisions” were given under the provisions of the Anti-Defection Law.¹⁵

¹⁴ Supra I.

¹⁵ Subhash Kashyap, Anti-Defection Law and Parliamentary Priviledges,pg.79.

3.2.3. Constitutional Validity of the Anti-Defection Law

Decisions of the Presiding Officers were challenged and the constitutionality of the Tenth Schedule questioned in different High Courts. The judgment of the five member constitution bench of the Supreme Court declared Para 7 of the Tenth Schedule void. The Supreme Court judgment not only upheld the Court's power of Judicial review, but also said that while deciding cases under the Tenth Schedule the Presiding Officers were in the same position as tribunals and their decisions under the Tenth Schedule were subject to judicial review by the High courts and the Supreme Court (*Kihoto-Hollohan v. Zachilhu*)¹⁶. This made all the Presiding Officers of Legislatures sit up and make common cause. To others the blatantly partisan exercise of powers and misuse of authority under the Anti – Defection Law by some of the Speakers made the Supreme Court Judgement seem unexceptionable and necessary.

In *Kihoto-Hollohan v. Zachilhu*¹⁷ matters relating to disqualification of some members of the Nagaland Assembly on the ground of defection under the Tenth Schedule of the constitution came up for consideration. Matters relating to several Legislative Assemblies including those of Manipur, Meghalaya, Madhya Pradesh, Gujarat and Goa were also heard alongwith since all of them involved decision of certain constitutional questions relating to the constitutional validity of para 7 of the Tenth Schedule and of the 52nd Amendment.

The Supreme Court found that there were legal infirmities in the passage of the Anti-Defection Law in as much as the Constitution Amendment Bill had not been ratified by the requisite number of State Assemblies before being presented for the President's assent. Also, the Speaker's functions under the Tenth Schedule called for a judicial determination of issues under the law. The process of determining the

¹⁶ AIR,1993 SC412; (1992) Supp2 SCC 651.

¹⁷ AIR 1993 SC412; (1992) Supp2SCC651.

question of disqualification could not be considered part of the proceedings of the House and as such not amenable to judicial review. The Supreme Court struck down para 7 of the Schedule barring the Jurisdiction of Courts and declared that while operating under the Anti-Defection Law; the Speaker was in the position of a tribunal and therefore, his decisions like those of all tribunes were subject to judicial review.

In regard to the various contentions raised and urged at the hearing, the Supreme Court held as follows:

(1) 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 the Parliament and the legislatures of the States. It does not violate their freedom of speech, freedom of vote and conscience as contended.

The provisions of Paragraph 2 do not violate any rights or freedom under Articles 105 and 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 effect the democratic rights of elected members and, therefore, of the principles of Parliamentary democracy, is unsound and is rejected.

(2) Having regard to the background and evolution of the principles underlying the Constitution (52nd Amendment) Act, 1985, insofar as it seeks to introduce the Tenth Schedule in the Constitution of India, the Provisions of Paragraph 7 of the Tenth Schedule of the Constitution in terms and in effect bring about a change in the operation an 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 clause (2) of Article 368 of the Constitution of India.

(3) 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 and are complete in themselves, workable and are not truncated by the decision on paragraph 7.

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

That the deeming provision in Paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that Articles 122(1) and 212(1) of the Constitution as understood and explained in Keshav Singh's case¹⁸ to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the words, 'be deemed to be proceedings in parliament' or "Proceedings in the legislature of a State" confines the scope of the fiction accordingly.

The Speakers / Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

¹⁸ Spl.Ref.No.1 (1965) SCR413.

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 adjudicator power, no *quia timet* actions are permissible the only exception for any interlocutory interference being cases of interlocutory disqualification's or suspensions which may have grave, immediate and irreversible repercussions and consequence.

(5) It would 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 disqualification imposed by Paragraph 2(1) (b) must be so constituted as not to unduly impinge on the 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. 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 internal policy and programme of the political party on the basis of which it approached the electorate.

(6) 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.

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 to voting or abstaining from voting contrary to such a direction.

In a minority judgement delivered by two of the five judges, inter alia the following points were made :

- (i) In the absence of ratification of the State Legislatures, not only Para 7 but the entire Constitution (Fifty-second Amendment) Act, 1985 is rendered unconstitutional.
- (ii) Adjudication of matters regarding disqualification of members should have been entrusted to an independent body outside the House and not to the Speaker who depended for his continuance on the majority of the House.
- (iii) This view expressed by the minority JJ. Was not incorrect because some of the Speakers, e.g. Mr. Shivraj Patil's ruling¹⁹ on 1st June 1993 regarding 20 M.P.s of the Janata Dal failed to act impartially and independently.

3.2.4. Lacunas and the Defects in the Anti-Defection Law

The Anti-Defection Law was well conceived, with good intentions, but it was born in sin and took too long to be born. The motivation and timing were not entirely honest or wholly honorable. It was a Bill Prepared in haste and rushed through the two Houses at a time when the ruling party had an unprecedented majority in the Lok Sabha. It was natural for the leader as the watch-dog of party interest to want to ensure that his sheep kept together and did not desert the flock. The Anti-Defection Law served the Congress Party well in as much as for five years it worked as an admirable deterrent against party

¹⁹ A.G. Noorani, Constitutional questions in India, 2000, p.189.

dissidents turning defectors and threatening the stability of the Government. During the eighth Lok Sabha Period, there was only one case of defection in which the member was disqualified under the Tenth Schedule. It is important that those who were eloquent about the basic purpose of the Anti-Defection Law and its Objectives of preventing unprincipled acts of defection should not forget this factual background and perspective.

The Constitution (Fifty-Second Amendment) Act that added the Tenth Schedule to the Constitution was intended as much to prevent individuals acts of defection as to protect sizable group defections which may qualify as splits or mergers. Even the Prime Minister was aware of its many flaws and proposed its acceptance as a beginning with scope for improvements later. He told the Lok Sabha on 30 January 1985 :

“There are lots of areas in this Bill which are grey. We are covering new ground which may not be covered anywhere else in the world. So there will be shortcomings in the Bill”²⁰

Right from the time of its enactment, the Anti-Defection Law as subjected to severe criticism and many loopholes were pointed out. Fundamental issues in regard to serious lacuna in the law were raised in the media, by the members of the Parliament and by some Scholars. The Tenth Schedule has by and large failed to put a curb on defections.

The Constitution (Fifty –second Amendment) Act, 1985 has been the subject matter of a controversy from the very beginning. It has been questioned on several grounds viz. that it is violative of the basic structure of the Constitution, that it is beyond the competence of Parliament and that it gives preference to expediency over principles.

²⁰ Subhash Kashyap, Anti-Defection Law & Parliamentary Privileges,pg78

Even before the Anti-Defection Law was passed by the Parliament, serious doubts were expressed in regard to its constitutionality and advisability.²¹

- (i) Whether the people voted for party programmes and politics or for persons and, if for the latter, whether party bonds could be given constitutional recognition and protection ?
- (ii) Whether there was an unbreakable bond between the members and the political party on whose symbol they contested the election? Whether the basic relationship was between the party and the member or between the member and the constituency people whom he represented?
- (iii) Whether it was fair to make a distinction between defection by individuals and defection by groups merely because the latter might follow or might for the sake of convenience be called split of a party or merger of parties particularly when motivations behind splits and mergers or group defections may not often be very different from those for defections? Whether an individual defector should be punished while defectors in a group could go Scot free under the garb of a party split?
- (iv) Whether there was any justification for not accepting the Chavan Committee recommendation for debarring defectors from occupying Ministerial offices?
- (v) Whether the disqualification provision did not militate against the basic freedoms of association, opinion and expression – including the freedom of changing association, opinion etc. – guaranteed under the Fundamental Rights Chapter of the Constitution? Also what happened to the most fundamental parliamentary privilege of members under Articles 105 and 194 of the Constitution? Would any legislation even constitutional amendment which restricted the freedom of choice or bound the vote of a legislator not amount to tampering with the

²¹ S.Kashyap- Ibid.pg.8

fundamentals of the Constitution and become an affront to democratic norms?

- (vi) Would disqualifying legislators on grounds of defection not open floodgate of litigation (even if the jurisdiction of courts was sought to be barred) and create a situation where legislators themselves might have to look to the courts for protection of their rights vis – a – vis legislature?

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 law was made a part of the Constitution by addition in arts 102(2) and 191(2) to make defectors subject to disqualification and strengthen the cause of democracy through healthy growth of party system. But in practice, it has led to (a) growth of inner party indiscipline and formation of various interest groups within the party damaging party democracy (b) scope for defecting members to indulge in corrupt practices (c) groups defections and creation of conditions of political instability, (d) opportunities to interest groups to manipulate political support for their economic or class interests and (e) unruly and violent scenes in the parliament as well as in state assemblies.

The anti defection law as it stands, offends provisions of arts. 81, 83, 102(e), 99, 104, 170, 171, 172, 173(c), 188, 191(e), 192 and 193 read with Secs. 2(f), 29(a) and 77 of the representation of the People Act, 1951 provisions permitting group defections are ultra vires the basic principle of representation by the people for forming a responsible government of the republic on truly democratic lines.

Parliament cannot have such powers to deface the basic democratic structure.

The provisions of arts. 84 and 173 prescribe qualifications for membership of individual person, and not on any party basis. Disqualification, voting, oath etc., are all recognized on individual basis and there is no mention of political party base anywhere in the constitution except in the 10th Schedule of the Constitution and Secs. 2(f), 29-A and 77 of R.P. Act, 1951.

The provision in Arts 75(1) and 163 as well as the conventions for appointment of Prime Minister and Chief Minister require that they should hold confidence of the House of people or the Legislative Assembly as the case may be. It makes no reference to any political party.

The procedure for deciding majority voting in the House of people and in Legislative Assemblies vide arts. 100 and 189 respectively is by counting the votes of the members present. They do not provide for any voting on party basis. So conduct of House business and approval of any legislation by majority of votes irrespective of party lines would not be termed as invalid, nor would it affect the confidence of the House in the Council of Ministers. So also disqualification of any member on the ground of disregarding the party whip would not affect the result of Vote of Confidence.

The following provisions of the 10th Schedule seem to be violative of the basic structure of the Indian democracy.

- (i) The provision of para 2(2) for disqualifying an independent member on ground of joining any political party seems to be inconsistent with provisions of Arts. 84 and 173. It also seems to be discriminatory inasmuch as the nominated members are permitted vide para 2(b) (ii) to be members of a political party within a period of six months from the date of taking oath.

- (ii) The provision of six month period in para 2(b) (ii) and para (3) does not seem to have any rational basis and can be termed ad hoc and arbitrary, and ultra vires the constitution.
- (iii) The provision made in para 3 to permit split of one third group of a party and also to recognize such group as separate party is irrational and basically ultra vires the constitution and particularly provisions in arts. 84 and 173. it may also compel the defecting members to form groups of minimum one third of total membership through stupid means of money, muscle and manpower. This provision also seems to be basically against provisions of Secs. 2(f), 29-A and 77 of R.P. Act, 1951, which recognizes the election and representation of members on the basis of political party label, if he has contested the election as party candidate. It would amount to be the breach of trust of the people, particularly when the party recognized by the Election Commission binds itself to true faith and allegiance to the constitutions, and also, when the member nominated as party candidate make and subscribes oath as candidate and also as a member of the house on his election. Parliament has no powers to make alterations in the basic structure of the democratic set up even under Art. 368.
- (iv) The provisions in para 4 regarding merger of parties after election, even though such parties might have contested elections on separate party manifesto of quite opposite ideological considerations may also provide a scope for corrupt practices and unhealthy precedents and is against fundamental principles of Indian democratic system, and so seems to be ultra vires the constitution. The provision in para 4(2) to permit such merger by two third of members of any legislative party is also arbitrary and irrational. It may encourage group defection of minimum two third members by unscrupulous means.
- (v) The provisions in paras (3) and (4), have given rise to group defection as a routine phenomenon in the political game with a

view to emerging as a balancing force for capturing political powers. This is against basic principles of parliamentary democracy, ultra vires the constitution and immoral.

- (vi) The provision in para 7 to bar the jurisdiction of the courts (since struck down by the Supreme court) in matters of important disciplinary functions of the House of upholding value based political system, was intended to leave with itself powers to deal with contravention of rules in the same manner as in case of a breach of privilege of the House. It should have been the duty of whole House to enforce discipline and not of the Speaker alone.
- (vii) The provision in para 7 to bar the jurisdiction of the courts (since struck down by the Supreme Court) in matters of important disciplinary functions of the House for upholding value based political system, was intended to leave with itself powers to deal with contravention of rules in the same manner as in case of a breach of privilege of the House. It should have been the duty of whole House to enforce discipline and not of the Speaker alone.
- (viii) The provisions of Arts 12 and 14 make it mandatory that the rules of procedure, precedents, and conventions are uniform so as to maintain consistency in the matter of disqualifying members on grounds of defection. The provision in para 8 (1) to allow the Chairman or the Speaker of each House to make Rules of Procedure for period of 30 days comprised in one or more sessions even for procedure of any inquiry required to be made for deciding the question of disqualification under para 6 (1), is ultra vires the political system. It may create a condition of great political chaos, as any instant decision by the Chairman or the Speaker of the House is likely to be politically motivated, biased or arbitrary and might hit at the fundamental principles of any democracy and Rule of Law.

The Tenth Schedule was hailed as a panacea for the evils of defection. Unfortunately it has turned out to be a flop. In fact the

remedy has proven to be worse than the disease and in more ways than one it has encouraged horse-trading and the accompanying corrupt practices.

3.2.5. Whether Anti- Defection Law is applicable to newly elected MPs.

One more constitutional issue is whether the newly elected representatives of the people will be subject to the anti-defection law in the period between the announcement of the results and the formal constitution of the Lok Sabha. At the time of 1989 general election, Mr. Palkhivala was reported to have said that “the Tenth Schedule of the constitution which provides for disqualification would therefore, not apply to the newly elected representatives before they form the new Lok Sabha.”²²

Clause 1 of Article 102 shows that there are two distinct stages involved in the process of an election. The clause reads: “ A person shall be disqualified for being chosen as, and for being, a member of either house of Parliament...”. One Stage is thus of being chosen, and the other that of becoming a member.

Clause 2 of Article 102 deals only with the second of these stages i.e. of “being a member of either house.” The question that, arises is as to when i.e. at what state does a person become a “member of the house”? We will only refer to the stage at which a person becomes a member of the Lok Sabha.

Mr. V.N. Shukla says the following : “ Unless candidates take their oath and take their seats they do not become members.....”²³

The explanation appended to Rule 3 rules 1985 of these rules reads as follow: “ A member may be regarded as having abstained from voting

²² The Indian Express: New MPs and anti-defection Law by S.C. Gupta, 19-9-91, pg-7.

²³ Commentary on the Constitution of India-V.N.Shukla.

only when he being entitled to vote, voluntarily refrains from voting.” The explanation clearly points out that merely being elected does not entitle a person to vote as a member. In fact, Article 104 goes much farther and prescribes a penalty of Rs. 500 per day on a person who sits or votes “as a member of either house” before, inter alia, he has complied with requirements of Article 99. It is therefore, clear that merely being elected is not the same thing as becoming member of the House.

Certain provisions of the Representation of the People Act 1951 are significant in this particular behalf. Section 2(D) defines “election” as meaning election “to fill a seat”, which is not the same thing as treating the seat as filled by such election. Section 14 of the Act says that a general election shall be held “for the purpose of constituting a new house of the people” It does not mean that a new house stands constituted with the declaration of election results. This view is further fortified by other sections of the Act. Of the Act deals with declaration of results by the returning officer on completion of counting, and Section 67 requires the returning officer to send the necessary report in this regard to prescribed authorities, including the Secretary of the House of the People, whereupon the appropriate authority shall cause to be published in the official gazette a declaration containing names of the “elected candidates”. It is to be noted that the expression used is “elected candidates” and not members of the house. Section 73 says that where a general election is held for the purpose of constituting a new house”, the Election commission has to notify in the official gazette “results of elections in all constituencies”. This declaration by the Election Commission under Section 73 is obviously wholly different from declaration of the elected candidate’s result as made by the returning officer under Section 66. The further part of Section 73 of utmost significance, as it clearly says that it is “upon the issue of such notification that house of Assembly shall be deemed to be duly constituted”.

Section 79 of the Act also needs to be noticed. Clause (F) of this section defines a “returned candidate” as meaning a candidate whose name has been published under Section 67 as duly elected”. Thus, what happens on declaration by the returning officer under Section 66-67 is merely an announcement as to who is the returned candidate. This announcement does not by itself make the candidate a member of the House.

That this should be so is only too obvious. When there is no house in existence, there cannot be a member of the House in existence, and the House does not come into existence merely on a candidate having been declared returned or elected.

Another important article is Article 99. It bears reproduction in full: “every member of 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.”

If the House has come into existence and, if the head of the House i.e. the Speaker is in office, there is no need or occasion for an oath or affirmation to be made or subscribed before the President. Even when the House is already constituted and is in session and a by-election takes place, a candidate returned in such a by-election is required to take his oath not before the speaker but before the President or his nominee. It is open to the President to make the Speaker his nominee, but then the Speaker administers the oath or affirmation not in his capacity as speaker but as a nominee of the President. This, too, reinforces the point that before taking such an oath or making such affirmation, the returned candidate does not acquire the status of a member of the House.

It may not be out of place to refer here to the question of writ of quo warranto. One of the principles underlying issuance of quo warranto is the holding of a public office by the respondents assumption of office is, therefore, essential, and under our constitution, office of member of a house is not assumed until an oath or affirmation is made.

It will, therefore, be wrong to speak of any “rights” or “liabilities” of one who is only a “returned candidate”. These can be applied to him only when he becomes a member of the house, which is possible only when he becomes a member of the house, which is possible only upon his taking the requisite oath under Article 99. How then can defections be checked in the interregnum? It is time the jurists and law makers came to grips with this issue.

1.2.3 ANTI-DEFECTION LAW IN SOME OTHER COUNTRIES

The traditional term for the later has been floor crossing which had its origin in the British House of Commons where a legislator was supposed to have changed his party allegiance when he crossed the floor and moved from the Government to the opposition side or vice versa. Political stalwarts like William Gladstone, Joseph Chamberlain, Winston Churchill and Ramsay MacDonald were known to have changed their party allegiance at one time or another and some of them even more than once. Likewise, in Australia, Canada and the U.S.A. there had been instances of politicians defecting from one party to another.²⁴ It is well known that in UK, Canada, Australia and New Zealand where parliamentary democracies similar to India exist, member's sometime vote in defiance of the Party Whip or direction and they are not penalised. In fact, in these countries dissent has played an important part. There is no question in Britain or in any of the other three countries mentioned above of unseating the dissenting

²⁴ Subhas C. Kashyap, *The Politics of Power*, 1974

member. Mere non-compliance with a party directive can never be considered to be political defection because such a member has neither changed sides nor crossed the floor; he continues to remain a member of his party.

It is interesting to note that the need or the desirability of banning defections by law or through a constitutional provision was not considered in any of the Western democracies. The only countries to pass anti defection laws have been four countries in South Asia viz. India (1985), Pakistan (1997), Sri Lanka (1978) and Nepal in 1997. In all the four countries, anti defection laws have proved ineffective. In India, the result was a large number of defections, with groups instead of individuals defecting. In Nepal also, group defections and toppling of Governments could not be prevented. In Pakistan, the operation of the Law was stayed by the Courts and subsequently democracy itself was toppled by military dictatorship. Recently, the 14th Amendment to the constitution of Pakistan has generated a lot of controversy, The Amendment states that, a member of the Parliament can be disqualified if he or she goes against the party on whose platform he or she has been elected. But the law, known as the “anti-defection law,” does not end there.

The new enactment says that a Member of the House shall be deemed to defect if the commits a breach of party discipline or votes against the party's orders. The ultimate decision of whether a defection has occurred lies with the party leader. This makes the party leader a veritable dictator since the parties in Pakistan are non-democratic and centre around one person as in the case of both the ruling and the opposition parties the PML-N of Nawaz Sharif and the PPP of Benazir bhutto. “ The party leader will decide whether a defection has occurred or not.

This means that his powers have been enhanced at the cost of the members".²⁵ Historically, Pakistan's politics has suffered greatly from horse trading. Floor crossing has been a bane of all governments which followed the dictatorial rule of General Zia, in 1988.

English Language Daily says : " The haste with which it was rushed through a parliament may partly be offset by the political consensus behind it. Law in haste is becoming a disturbing pattern which undercuts parliamentary scrutiny and debate so essential to democratic transparency."²⁶ Many Political analysts say that the public's right to know has been circumvented in this roller coaster style of passing bills into law.

'The News' argues "bitter experience instructs us that most of our problems lie not in the laws but ourselves. " Ghani Erabic, an other political analyst says that the safe guards against horse trading were already available in the Political Parties Act of 1968 but "this law was deemed to have been interpreted to death by the courts paving the way for the ouster of the judiciary by the 14th Amendment.

Now the ousted parliamentarian cannot approach the courts for redress. While the opposition, Pakistan People's Party made some dissenting noises, which led to defection cases being referred to disciplinary committees of the parties concerned, before actually being decided by the party boss, this law suits them as well, since many expect that the next government will be formed by their party.

The ultimate loser is the citizen, who saw parliament as a place for debates and to thrash out issues before going for the vote.

3.4. NEED TO REFORM THE ANTI-DEFECTION LAW

The main reforms needed in the Anti-Defection Law.

²⁵ "The Pakistan Times, 7th July, 1997. article by Kamal siddiqi-14th Amendment: Bolstering Leaders.

²⁶ Ibid.

1. Several terms like 'political parties', 'split', 'merger', etc, have not been defined and many of the problems have been caused by this ambiguity, these terms needed to be defined clearly. The Tenth Schedule defined a "Legislature Party" and an "Original Political party" in either case with reference to a "Political Party" but unfortunately a "Political Party" has not been defined. It would be necessary to define a political party and lay down conditions for its recognition for purposes of the Anti-Defection Law.
2. Direction 120 of the Directions of Rules made by the Speaker provides for recognising a parliamentary party or group. To be recognized as a party, the minimum number required is one – tenth of the membership and for a group it should be at least 30. But, after the Anti-Defection Law, every member of the House who is not elected as an independent or nominated, belongs to his party even if he be the only member of his party i.e., irrespective of the number of its members in the House, every party that is represented in the House comes to automatically get constitutional recognition as a party. Thus, there is some contradiction between the constitutional provisions and the Speaker's Directions. One of the two would need to be amended. Until that is done, the Constitution would obviously prevail and the Direction would stand only to the extent that it does not contravene the former.
3. The Rules define the "Leader of a Legislature Party" as one chosen by it but in the past disputes about the leadership had arisen. It would be desirable to categorically lay down that the leader would be one who was elected by the legislature party and commanded majority support within the party.
4. The objective of the Anti-Defection Law was stated to be to cure the evil of unprincipled defection by legislators. Since the point of reference for every case of defection was a political party, no reforms in the Anti-Defection Law would be meaningful without a

deep view of the conception, structure, and functioning and role perception of political parties in our polity.

5. The terms 'expulsion' and 'unattached' do not figure in the Anti-Defection Law. The law needed to be amended to prevent the party leaders from resorting to the device of 'expulsions' and the presiding officers from rushing to declare some members as 'unattached' with a view to seek to circumvent the Anti-Defection Law or only to bring some members under its clutches. At present it is not permissible for a member to voluntarily resign from the party which had set him up as a candidate. Its natural corollary should be that it should be open to the party to expel him on the ground of anti-party activities outside the House and take away from the party label on which people had elected him. If a member cannot be allowed to voluntarily resign his party also cannot be permitted to expel him. Expulsions from the legislature party of duly elected members should be made impermissible during the term of the House. In any case, even if they are allowed under the Party constitution, they cannot be recognised inside the House for purposes of the application of the Tenth Schedule.

The Supreme Court has since held that in view of the explanation to para 2(1) of the Tenth Schedule, an expelled member continues to remain a member of the political party that had set him up as a candidate at polls.²⁷

6. The Tenth Schedule and the Rules framed there under do not stipulate the existence of any 'unattached' members in the House. Every member is a member of the party on the ticket of which he contested the election or he is an independent or a nominated member. If it is proposed to retain the Presiding Officer's Power of declaring a member as 'unattached', the category would need to be specifically defined and provided for in the Anti-Defection Law. Also, if an elected member can be expelled by the party and declared 'unattached' by the Speaker, it stands to reason that he

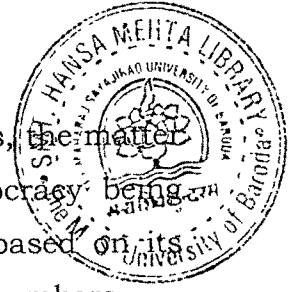
²⁷ G.Vishwanathan V. Speaker, Tamil Nadu, AIR 1996 SC 1060.

becomes free from the bondage of affiliation to the political party on the Symbol of which he was elected to the House and if so, it should be permissible for him to join another political party or form a new party.

7. So far as the functioning of a member inside the House is concerned, every member must have full freedom of thought and expression and to vote member has the right to dissent and to disagree with one's party or its leadership. The only condition is that if he leaves the party or votes against it in a matter where fall of government is involved, i.e, on an adjournment motion, no-confidence motion, demands for grants or motion of thanks on the President's Address etc., such occasions to be specified in the law then his seat would automatically fall vacant and he would have to seek re-election. After all, purpose of the Anti-Defection Law cannot be or should not be to scuttle disagreement or freedom of expression and enforce blind compliance and docile conformity, the purpose is to prevent unprincipled change of party for the sake of money, position or power, or for toppling a legally constituted government. This aspect has since been recognised by the Supreme Court in the judgement but it will still be desirable to lay it down in the law clearly.
8. The language of the constitution, Tenth Schedule, para 2 obviously amounts to making "defection" a cognizable offence inasmuch as it categorically says that a defecting member "shall be disqualified". But the rules have sought to considerably dilute or modify the intent and impact of the provision by laying down in effect that no notice of defection by a member shall at all be taken unless a petition is made and received in writing from another member. This flaw needs to be corrected by amending either the constitutional provision or the rules. While the same provision clearly seems to intend and ordain almost immediate disqualification or in any case the most expeditious decision in

the matter, the Rules have been so framed as to involve a most dilatory procedure.

9. The whole purpose of the Constitution putting this responsibility on the shoulders of the Presiding Officers was to ensure expeditious decision. In fact, during the debate on the floor of Rajya Sabha, the then Prime Minister, Rajiv Gandhi had said on 31st January 1985 that the authority to decide matters of defection was entrusted to the speaker to ensure quick decision. He said, "the decision should be automatic and the operation of the Bill should be quick so that there is no time in which horse trading can take place". If so, the dilatory procedures under the rules completely defeat that purpose. No time limit being prescribed for the committee making a report of the Presiding Officer taking a decision, matters may be kept pending indefinitely, may be even for the entire life time of the house. In the first case of disqualification in the eighth Lok Sabha the decision took 17 months. In another case later the Speaker took nearly 2 ½ years to pronounce his decision. It is, therefore, necessary that the Rules are brought into greater conformity with the aims and objects of the Tenth Schedule.
10. Para 2 of the Tenth Schedule inter alia lays down that subject to other provisions, a member will be disqualified if he votes or obtains from voting contrary to any "direction" issued by his political party. But, questions like what constitutes "direction", how it is to be issued, who can legitimately issue it etc. have not been addressed. In case of a party split, for example each emerging faction may claim to be the real party and may issue its own whip to all party members. In the 1997 defections in Uttar Pradesh, the legitimacy of the whip issued by the BSP leader Mayavati in regard to voting on the motion of confidence in Kalyan Singh Ministry was questioned. Doubts were expressed on whether the whips were really served or not, whether the whips were altered or whether fake documents were involved.



The position calls for clarification. Among other things, the matter is linked with the question of internal party democracy being ensured by law. Legitimacy of the whip has to be based on its being having the support of the majority of the party members.

11. Another objective of entrusting the responsibility of determining disqualification of members to the Presiding Officers was probably to ensure impartial, objective and non-partisan decisions. However, without questioning the impartiality of any Presiding Officers, it can be safely asserted that in the conditions of today in our country where Speakers are usually chosen by the ruling party and depend for their continuance in office on party support, it would be unrealistic to expect them to function entirely without party considerations even in matters where questions of life and death for their party or its government, or its leadership may be involved. It was therefore a fundamental mistake to involve the high office of the Presiding Officer / Speaker in this political and highly controversial matter of defections

There was no justification for their trying to retain the authority to take decisions for disqualifying members under the Anti Defection Law. It was not part of the business of the House where, of course, the Presiding Officers' authority should be supreme and unfettered by courts of law outside. Also ideally it was not and should never be part of the duties of the exalted office of the presiding officer to be involved in highly political and controversial cases of conflicts of party interests and health and unhealthy maneuverings of power politics. It would have added to the high prestige of the Presiding Officers if they had unanimously resolved that it was wrong for the Anti-Defection Law to put the Presiding Officers in a Position where they would become subjects of political controversies. It was not fair to put them in a situation where their decision would cause the fall or enable the continuance of governments. The law could then be amended to entrust the responsibility of determining within a strict time frame

all matters of disqualification to a special bench in the Supreme Court and High Courts or an independent body consisting of judges. Suggesting that the decision by the Presiding Officers can be subject to review inter alia by the President or governor would be a remedy worse than the malady inasmuch as it would in effect mean that the government could upset the decision of the Presiding Officer. Instead of creating an authority to review the decision of the Presiding Officers, an independent authority may need to be created to take decisions under the Anti-Defection Law so that the office of the Presiding Officer remains free from political controversy and its pristine honour and glory are restored.

3.1.5. NCRWC'S RECOMMENDATIONS

The National Commission to review the working of the constitution made following the recommendeds :

1. The Provisions of the Tenth Schedule of the constitution should be amended specifically to provide that all persons defecting – whether individually or in groups – from the party or the alliance of parties, on whose ticket they had been elected, must resign from their parliamentary or assembly seats and must contest fresh elections. In other words, they should lose their membership and the protection under the provision of split etc., should be scrapped. The defectors should also be debarred to hold any public office or a minister or any other remunerative political post for at least the duration of the remaining term of the existing legislature or until, the next fresh elections whichever is earlier.
2. The vote cast by a defector to topple a government should be treated as invalid. Further, the 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.

3. The Practice of having oversized Council of Ministers should be prohibited by law. A ceiling on the number of Ministers in any State of the Union Government be fixed at the maximum of 10% of the total strength of the popular house of the legislature.
4. The practice of creating a number of political offices with the position, perks and privileges of a minister should be discouraged and at all events, their number should be limited to two percent of the total strengths of the Lower House.
5. Independent candidates should be discouraged and only those who have a track record of having won any local election or who are nominated by at least twenty elected members of panchayats, municipalities or other local bodies spread out in majority of electoral districts in their constituency should be allowed to contest for Assembly or Parliament.
6. Article 105(2) may be amended to clarify that the immunity enjoyed by Members of Parliament under parliamentary privileges does not cover corrupt acts committed by them in connection with their duties in the House or otherwise. Corrupt acts would include accepting money or any other valuable consideration to speak and / or vote in a particular manner. For such acts, they would be liable for action under the ordinary law of the land. It may be further provided that no court will take cognizance of any offence arising out of a member's action in the House without prior sanction of the Speaker or the Chairman, as the case may be. Article 194(2) may also be similarly amended in relation to the members of state legislatures.

3.6 RECENT DEVELOPMENT-91ST AND 97TH AMENDMENT

The NDA and the then Opposition deserve a pat on their back for passing unanimously the Constitution Amendment Bills with respect to defections and the size of the Council of Minister. Such constructive cooperation is needed for carrying out other necessary reforms. Since the 13th Lok Sabha was on the verge of being dissolved, it took a fresh look at the status of the parliamentary reforms recommended by the NCRWC. The above mentioned first and third recommendations of the NCRWC have been followed by the National Democratic Alliance by Constitutional Bills.

1. THE CONSTITUTION (NINETY FIRST AMENDMENT) ACT, 2003

The provisions of the 91st Amendment are derived from a chapter of the CRC report devoted to electoral processes and political parties.

It strengthens the control of the political parties over their legislators.

By 91st Amendment in article 75 total number of Ministers, including the Prime Minister, in the Council of Minister shall not exceed fifteen percent of the total number of members of the House of the People. This will make the Government more accountable than ever before to the two Houses.

(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”.

2. 97th Amendment Act 2003

The Amendment Act to the anti-defection law, seeks to cleanse the political system.

The Dinesh Goswami Committee on electoral reforms, the Law Commission report and the Constitution Review Commission had recommended the deletion of Para 3, The Constitution Review Commission, in fact, specifically recommended that defectors whether individually or in group must resign. In effect, they lose their membership of legislature. This recommendation follows the principle that changing loyalties changes the basic presumption of a mandate and the member must seek a fresh mandate on a new symbol if he/she decides to shift loyalties.

As a result of this Amendment, in future any member of parliament or of a State-Legislature who defects to another party will lose his seat. He will have to get reelected to enter the house irrespective of whether he defects singly or as a member of a group consisting of not less than one-third members of the Legislature party concerned. The “Bulk Defections” will not longer be recognised as legal splits in parties. Defecting MLA’s, irrespective of their numbers will be barred from holding any public office as a minister or any other remunerative political post till their re-election.

In fact, the Act has ignored a very important recommendation of the Constitution Review Commission: that the power to settle questions of disqualification on the grounds of defection should be taken away from the Speaker of the House and be vested with the Election Commission. Recent legislative history illustrates (Uttar Pradesh is a case in point) partisan behaviour by Speakers when it comes to interpreting and applying the anti-defection law. By ignoring this very important aspect, this amendment Act has already lent itself to charges of manipulation and political manoeuvring.

But party spokesman Abhishek Singhvi said it was not a wise move to disqualify members automatically when they changed loyalties because it would stifle inner-party democracy.

The Samajwadi Party (S.P.) too believes that automatic disqualification of members on defying the whip or on changing sides can lead to "dictatorial practices" inside parties, but at the same time the party wants some law to tackle the "aya Rams and gaya Rams" of politics.

Smt. Sushma Swaraj said that the Act amending the anti-defection law (10th Schedule of the Constitution) deleted Para 3 of the Schedule, which pertains to exemption from disqualification of members in the case of party splits caused by one-third of them. Under the new provision, if any MP or MLA voted against the party whip, he or she would stand automatically disqualified. Under the existing provisions, if the violation of the whip is done by one-third of the strength of the parliamentary or legislature party, there could be no disqualification. Similarly, crossing over to other parties would also result in automatic disqualification of the member concerned and he or she would have to seek a fresh mandate on a new symbol.

Communist Party of India (Marxist) general secretary Harkishan Singh Surjeet, told *Frontline* that in his opinion, what motive led the BJP was, more than the desire to reform the system, the need to save its own house from disintegration in Uttar Pradesh. "Its MLAs in U.P. are a frustrated lot. Especially the Thakur MLAs, who are upset with the recent events in the State. The party is worried that they might switch sides in the near future. Hence this move was to save its own skin".²⁸²⁹

The S.P. is apprehensive that the move would encourage dictatorship within the party, but sees no other option to curb the malaise of defections. However, it is difficult to imagine how many MPs would actually forgo an instrument like Para 3 which helps them to settle political scores or topple governments through bulk defections. It has

²⁸ *Frontline*, vol 20, issue 10, May 10-23, 2003. - Anti Defection Law.

²⁹ *Ibid.*

been seen to be happening too often in the past, more so in Uttar Pradesh, where the BJP is a partner in the government, than anywhere else. In fact, the Mayawati-led government in Uttar Pradesh is surviving today because it has managed to engineer splits in the State Congress (I) unit and from some other smaller parties.

Abhishek Singhvi, himself a lawyer, says automatic disqualification of members either for defying the whip or for changing sides is "not a wise move" because it would encourage "dictatorial practices inside political parties and infringe on the elected members' fundamental right to free speech". According to Singhvi, what was required was a focused approach to "plug the loopholes" in the existing provisions, instead of systemic changes. In his opinion, the loopholes could be plugged using three measures: (1) the Speaker should be bound by a time-limit of seven to ten days to declare his decision on a case of defection or a split; (2) an external, non-partisan body like the Election Commission should be authorised to decide on issues of disqualification; and (3) the one-third limit may be increased to a higher limit for a split to be legal.³⁰

The power to decide disputes regarding defection remain with the Speakers. It ought to have been transferred to the Election Commission as suggested by experts. By limiting the size of Council of Ministers will definitely save public money though it will not necessarily mean better governance. The present state of affairs is not satisfactory. There is no need for even 15%. A handful of clean and competent Ministers are enough to run the affairs of the country. We hope in the long term the 97th Amendment Act is likely to contribute to good governance.

³⁰ Ibid.

NCRWC's PROPOSALS

THE NCRWC proposal seeks to rectify the law just by changing the manner of counting the votes in the legislature in the event of division on certain motions. According to the procedure proposed, the legislative wing of every party represented in the House shall have one block vote, which is equal in value to the number of members of that party in the House. The value of the block vote of each independent member or nominated member shall be equal to one. Under the present law, independents and nominated members would be disqualified if they join a political party.

Under the proposed measure, the fate of the motion would be decided by counting the total value of block votes, and not individual votes. The block vote would be deemed to have been cast on that side of the motion on which a majority of the members of that block have voted. In the event of an equal number of members of a block voting for and against the motion or abstaining, the entire block would be deemed to have abstained from voting on the motion.

The NCRWC proposal gives the option of a group of parties registering itself as a pre-election coalition so that all its constituents together shall have one block vote during the term of the House so constituted. This would stop a potential destabiliser from leaving a pre-election coalition.

The proposal does not restrict the freedom of a legislator to vote according to his or her conscience. Only in the case of motions that would have a bearing on the stability of a government would his or her vote be deemed to have been cast on the side on which a majority of the members of his block have voted. When a member's vote in crucial matters is counted with that of the majority of his party members and does not depend on the will of any leader, there would be no case for disqualification. This will make the Tenth Schedule redundant.

These changes are proposed to be incorporated through an amendment that would add a proviso to Article 100 (on voting in Parliament) and Article 189 (on voting in State legislatures).

3.8. CONCLUSION AND SUGGESTIONS

One of the ways to put an end to unethical defections would be to disintegrate legislature and executive and make the membership of executive incompatible with that of legislature. The French and Swiss parliamentary models are illustrative of such 'incompatibility'. If this principle of 'incompatibility' be introduced in the Indian Constitution, the motivation for defections would be effected and with it the inclination of members to defect will vanish. This as an additional advantage of providing for appointment of experts. In modern era, when executive has to attend to specialized and complex problems of administration, it is preferable to have executive of experts than politicians. Though this would give a wide discretion to the president in appointing the Prime Minister and wide discretion to the Prime Minister in choosing other ministers, parliament could always have a check on unscrupulous exercise of such discretion with its power to pass a 'no confidence motion' and get rid of the executive as a whole.