

**ANTI-DEFECTION LAW : A STUDY OF FUNCTIONAL
ANOMALIES FROM 1985-92**

*Dissertation submitted to the Jawaharlal Nehru University
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for the award of the Degree of
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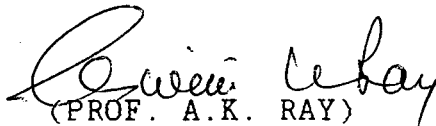
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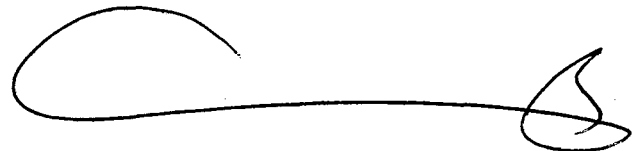
DECLARATION

Certified that the dissertation entitled "ANTI-DEFECTION LAW: A STUDY OF FUNCTIONAL ANOMALIES FROM 1985-92" submitted by SANJEEV KUMAR is partial fulfilment of requirements for the award of the DEGREE OF MASTER OF PHILOSOPHY is an original work and has not been submitted so far, in part or full, for any other degree or diploma of any university.

We recommend that this dissertation be placed before the examiners for evaluation.



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Inspite of the fact that I have taken advantage from different streams of intellectual ideas, the views presented in the present work are entirely my own and I am solely responsible for errors, if any.



(SANJEEV KUMAR)

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PREFACE

India, being the world's largest democracy, is in delicate phase of evolution. With the decline of one party dominance, the era of multiparty system has become a reality. The last two general elections show that no single political party have been able to capture power and the downfall of V.P. Singh's government, installation of government of Chandrashekhar and its eventual collapse and the subsequent ascendancy of a minority government led by Rao at centre has brought the issue of political maneuverability to the centre stage of party-politics. Undoubtedly, this trend has not only been confined to the central government but the state governments have been equally affected by this disease.

Since political defection is one of the emerging trend in Indian politics and multiparty system which accompanies it, the student of Indian politics, of late, have directed their attention to study these dynamic phenomenon. I also, being a curious observer of Indian political behaviour and institutions, dediced to work on political defection because of its far reaching implications on body politic. Ever since the enactment of the Anti-Defection Act and the functional aberration observed, I rather presumed that the Act has failed in achieving its desired objective.

INTRODUCTION

Politics in our country has become fairly colourful. Nowadays, at least not a day passes without defection of some politician(s) from their parent party to the one which promises better prospects of a win at the poll and a pension in tandem, or dissolution of an assembly upsetting all calculations of amassing more money and that too in black-a flourishing industry which one call hyper-growth oriented at the rate of Rs.50,000 crore a year, according to Reserve Bank of India estimates, or the formation of a new party mostly on a regional level because the older one has been milked dry so much that now it does not let them touch its udders.

The 'Aya Rams' and the 'Gaya Rams' of the Haryana political brand have now mushroomed in every other state of the country - North, South, East and the West. One can say, Winston Churchill has been proved right - and that too so prophetically though so late for it was he who in 1947 had warned that in the years to come an independent India would have to deal with unscrupulous and unprincipled politicians whom he described as "scoundrels and Charalatoms".

One of the most significant developments in the post-1967 (also referred as the watershed in the political defection) period has been the formation of numerous coalition governments of widely heterogeneous elements and the continuous process of changing party affiliation by legislatures in large numbers. This has affected the fate of ministries and the course of state politics. Newer and newer combination of groups and parties came into being, in many cases 'operation alliance' and operation of toppling the government continued side by side. During 1967-73 about 45 state governments were toppled in quick succession with as many as over 2,700 cases of defection by legislators. Over 60% of the legislators all over the country were involved in the game.¹ This illustrates how Indian democracy though numerically the largest in the world is politically extremely weak.

What is so strange about politics in this country is that what a man in the street calls a mess is considered a strategy by politicians. As the polling time approaches, almost every other day there

1. B.L. Fadia, "Indian Government and Politics", Sahitya Bhavan, 1991, Ch. 39, P. 382.

is a new scenario, new power equations are sought to be created either to retain or to secure power and position.

The apostasy of prospective poll candidates lends colour to what might otherwise be a drab electoral exercises all sound and fury and mud-slinging. It is the quick change of party and party labels that have made fidelity to any principles passe. The modern rules at poll-vaulting are like rugby scrimmage. Untidy, round and messy, but with rewards that justify the means. Alliances are entered into only to be broken with sucker punch that leaves one or the other party gaping.

Analysing it in evolutionary scheme, it is apparently clear that the game of defection was not unknown to the political leaders of past. The disease assumed serious proportion only after the stagnation in the Indian National had set in. As such, the Indian National Congress used to be an umbrella organization under which divergent opinions and ideologies could find shelter. Moreover, despite the presence of a towering personality like Nehru, democratic content of the Indian National Congress had not died down. It is not that the power game was not played in the inner circles of the Indian National Congress, but, it was also not the sole pre-occupation of the people running the show

of the party. Opposite view-points were heard and to a great extent were accommodated also. Moreover, Nehru himself was a great democrat and always treated the opposition groups in the party with respect.

Moreover, there was virtual absence of any opposition group in the Indian polity. It is surprising to note that how a democracy can function without any strong opposition group? This has been the greatest lacuna in the Indian political system till some time ago. This is why any opposition to the leader of Indian National Congress was taken to be a case of dissidence. This was the major reason for stagnation of Indian National Congress as a political party and the emergence of power-brokers in the Indian National Congress, which further led to the decay of the system. This led to the unhealthy trend of sycophancy. Also, the other opposition group did not put the challenge against the mighty empire of the Indian National Congress together and rather proved to be only symbolic. The Congress, thus, did not necessarily involve itself in rectifying their own organization. So in these circumstances Nehru said, "It is not the business of the Congress to build and develop an opposition party if the country has none".

However, the unhealthy trend of defection had to expose itself one day after too much decay and this took place in 1967. Indian politics ushered in an unprecedented era of political instability and horse-trading preceding and following the formation of coalition governments in several States. The formation of such coalition government was most often a marriage of convenience. They were constituted of heterogenous elements - political parties coming together to share power often having no ideological similarity. Several State Governments fell like the proverbial nine-pins in quick succession. The fall was usually brought about by dissatisfied and disgruntled legislators, who, it was widely believed, could not be accommodated as Ministers and the like or otherwise lucratively recompensed. They changed their party affiliation and were welcomed with open arms by other political parties which, though in minority, cherished the dream of forming a Government on the strength of such synthetic majority.

In the year 1967 alone, there were 438 cases of defection. During the decade 1957-67, there were 542 cases of defections. But between the fourth and fifth general elections in 1967 and 1972 from among the 4,000 odd members of the Lok Sabha and the Legislative Assemblies in the States and the Union Territories, there were nearly 2,000

cases of defection and counter-defection. By the end of 1971 March, approximately 50% of the legislators had changed their party affiliation and several of them did so more than once - some of them as many as five times.² One MLA was found to have defected five times to be a Minister for only five days. For sometime, on an average almost one State Government was falling each month due to changes in party affiliations by members. In the case of State Assemblies alone, as much as 50.5% of the total legislators changed their political affiliations at least once. The percentage would be even more alarming if such States were left out where Government happened to be more stable and changes of political affiliations or defections from parties remained very infrequent. That the line of office played a dominant part in this "political hores-trading" was obvious from the fact that out of 210 defecting legislators of the various States during the first year of "defection politics", 116 were included in the Council of Ministers in the Governments which they helped to form.³

2. See S. Agarwal, "Anti-Defection Law in India", The Parliamentarian, January, 1986.

3. Ibid.

Concerned with such a malaise of political defections in national life, a committee headed by the then Home Minister, Y.B. Chavan was constituted in 1968. The report which was submitted to the House in 1969 and subsequently referred to the Joint Committee of the two Houses could not find its place in statute book due to dissolution of Lok Sabha. Another Bill was introduced by the Janata Party in the Lok Sabha on 29 August 1978, but it was again opposed at the stage of introduction itself both by some ruling party members and the opposition as certain features of the Bill did not satisfy them. After some discussion, the motion for introduction of the Bill was withdrawn by leave of the House.

However, after the cataclysmic event of the assassination of Mrs Gandhi, the subsequent poll in 1984 witnessed the emergence of numerically strongest ever Government headed by Rajiv Gandhi. At this point of time, the debate of cleansing the public life reached a high point. In order to bring about national consensus on the Bill, the Prime Minister held prolonged consultations with the leaders of opposition groups. The Government acceded to the demand of dropping a controversial clause from the Bill relating to disqualification of a member on his expulsion from his political party for his conduct outside the House.

The Bill was passed by the Lok Sabha and Rajya Sabha on 30 and 31 January 1985, respectively. It received the President's assent on 15 February 1985. The Act came into force with effect from 1 March 1985 after issue of the necessary notification in the Official Gazette. The Constitution (Fifty-second Amendment) Act, 1985, amended Articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from membership of Parliament and the State Legislatures and added a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on the ground of defections.

Affiliated with such laws and their implications, a brief attempt has been made in Chapter I to trace out the democratic principles and shift in the party loyalties in post-independent India. The political game of defection which found its expression in late 60's and reached its peak in 80's have been dealt with in Chapter II. Third Chapter, however, is attempted to describe the provisions of Anti-Defection Law and their analysis in present day context. The lacunae and the suggestions are also included in the Chapter. The Fourth and the Fifth Chapters, however,

specifically deal with the authority of the Speaker and the glaring examples of the cases of defection alongwith the issue of parliamentary privileges and the fundamental rights of the members.

CHAPTER I

DEMOCRACY AND PARTY POLITICS IN INDIA

Democracy has been and can be conceptualised in various but overlapping ways. A concept of democracy can focus on what is regarded as the core constituent of democracy, namely, social justice, rights, equality or on the totality, the experience or both. What is essential for democracy is the charting out of relationship between institutionalised power and the people, between state and society. "The process of democratic practices, though, presupposes democratic social practice, i.e., the relation in society; in the family, community, between employers and workers, it ought to be democratically organized".¹ Democratic functioning is intrinsic to the strengthening of society. However, since the state is the ultimate domain of institutionalised power, the relation between this public domain and the society has been of central concern to most analysts, with the understanding that since the state is implicated in social

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1. Neera, Chandhoke, Institutionalization of participative Democracy: An unfinished Agenda, in People and Politics: The Indian Experience ed. by R.C. Dutt, Lancer Publication Pvt Ltd, 1992, pp. 142-44.

processes, the two agendas, namely, democratization of state and that of societies are corollaries of each other.

However, the democracy as it stands today in both the liberal and communist states has something in common. The exigencies of state in principles always give primacy to the basic constituent of the state - 'the people'. So, apparently, it is understood that the conflicting interpretations are the reflection of the mode of operative democracy. The fundamental functioning of any political system cannot be analysed by putting the system into a water-tight compartment. The change in social, economic and political spheres always acts as the guiding principle to see the accommodative power of any political institution. The vibrancy of the system in such a situation becomes directly related to the circumstances.

Moreover, to understand the logistics of democratic governance, it is therefore highly desirable to locate the basic principles which have so far contributed to the rise and growth of democratic institutions. Also, it is pertinent to ask at this stage as to what makes democracy the most cherished governing alternative to the majority of nation of the world? Why other alternatives to

democracy have mostly resulted into totalitarianism or systemic failure leading to anarchy?

The present day analysis of democracy presents some of the most amazing facts about the conceptual development of democratic principles. At times, it is also puzzling to note the variety of interpretation to which democracy is subjected to. Today, nearly every country claims that they are democratic no matter whether their views are on the left, centre or right. Political regimes of all the kinds for instance, Western Europe, the Eastern Bloc and Latin America, claim to be democracies; yet, what each of these regimes say and does is radically different. Democracy seems to bestow an "aura of legitimacy" on modern political life, rules, laws, policies, and decisions appear justified and appropriate when they are democratic. But it has not always been like this. The great majority of political thinkers from ancient Greece to the present day have been highly critical of the theory and practice of democracy. A united commitment to democracy is a very recent phenomenon. The widespread adherence to democracy as a suitable form for organizing political life is less than a hundred years old. In addition, while many states today may be democratic the history of their political institutions reveals the fragility and vulnerability of democratic arrangements.

Democracy in such a situation becomes a very difficult form of government to create and sustain. The history of 20th C Western Europe alone can be cited as an example where Fascism and Nazism came very close to obliterating democracies. Democracy has evolved through intensive social struggles and is frequently sacrificed in such struggles.

The meaning of democracy is not determined simply by the application of the word. Rather, the meaning is delineated by the characteristics it connotes. The term 'democracy' has both a descriptive and also a persuasive function. Consequently, "democracy" requires both a descriptive and a prescriptive definition. To avoid confusion, we must keep in mind (as Sartori has suggested)² three points: (i) That a firm distinction has to be made between the ought and is of democracy; (ii) that this distinction must not be misunderstood just because, clearly, ideals and reality interact; and (iii) that the prescriptive and descriptive definition of democracy must not be confused, because the democratic ideals does not define the democratic reality and vice-versa. A real

2. G. Sartori, "Democratic Theory", New Delhi, Oxford and IBH, 1965.

democracy is not and cannot be the same as the ideal one.

Different interpretations are, therefore, obvious in the hands of both classical liberals and Marxist writers. G. Sartori says, "... a democratic political system is one that makes government responsive and accountable and its effectiveness depends first and foremost on the efficiency and skill of its leadership".³

C.B. Macpherson commenting upon the democratic processes and the government feels that, "... democracy is merely a mechanism for choosing and authorising government, or in some other way getting laws and political decisions made".⁴

Lipset says, "democracy may be defined as a political system which supplies regular constitutional opportunities for changing the governing officials and a social mechanism which permits the largest possible part of population to influence major decisions by choosing among contenders for political office".⁵

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3. G. Sartori, 'Democracy' in International Encyclopaedia of Social Sciences, (1968), Vol.4, pp. 112-20.
 4. C.B. Macpherson, The Life and Time of Liberal Democracy, Oxford, (1977), p. 5.
 5. S.M. Lipset, Political Man, London, (1959), p.34.

However, there is a substantive distinction between the democratic ideas and the social values on which the different institutional arrangement functions. The place of ideas and beliefs of different scholars in the historical process of understanding does not lend itself to an easy generalisation. All the relations between ideas and social conditions, however, has its justification especially so when the different organs of democratic structures co-exist. The political parties, which act as the ventilation between the established ethos and practical requirements, are henceforth needs special scrutiny in the hands of changing circumstances. The holistic approach, therefore, would require an attempt to come to terms with the development and fate of democratic ideas, practices and institutions.

II

India's size and diversity poses considerable difficulties for anybody attempting to generalize about the nature of polity as a whole. The building blocks for national trends are provided by local politics and the elections of the central authorities which are often aimed

at winning and manipulating the 'hearts and minds'⁶ of those on political periphery. The federal arrangement of our polity also exert significant influence in generalisation of the democratic institutions.

Nevertheless, all the three theories of democracy operate simultaneously on the Indian soil. "These theories continue to be relevant for understanding the conditions for democracy".⁷ First and probably the most important is the theory that conceives of democracy as a form of government operative in market or capitalist economies. The second being exclusively related to the practice and sustenance in wealthy or economically developed societies. And third is the theory that suggests that well established traditions of compromise politics, and or acceptance of checks and balances on central power, help countries evolve into democracies. Analysing these theories, it can be safely argued against the Marxist, Liberals or Conservatives that there is a historic and logical connection between

6. Atul Kohli,(ed), "India's Democracy: An Analysis of Changing State-Society Relations", Orient Longman Ltd, 1991, p.2.

7. Atul Kohli,(ed), n.6, p.6.

capitalism and democracy.⁸ The historical analysis of European democracies has often stressed the rise of victorious bourgeoisie. The rising business classes, according to this view, successfully tamed the monarchical state, challenging the aristocratic claim of government as a prerogative of birth and slowly replacing it by the principle of government as a natural domain of wealthy 'commoners'. Later under pressure from organized working classes, legitimacy in Western democracies came to rest on the notion that government representatives have to be elected by a legally equal citizenry.⁹ This historical sequence in several countries led Barrington Moore Jr to the conclusion, "No bourgeoisie, no democracy".¹⁰

The Indian case also suggests that focus attention on the political, rather than socio-economic origins of democracy are the most helpful. Democracy in India took root in the first half of the century, at a time when modern

8. Samuel, Huntington, Will More Countries Become Democratic, Political Science Quarterly, 99, No.2 (Summer 1984), pp. 203-205. And Barrington, Moore Jr, Social Origin of Dictatorship and Democracy. Boston: Beacon, 1966, Ch.7.

9. Barrington, Moore, n.8, Ch.7; Reinhaard Bendix, Nation Building and Citizenship, Berkely, University of California Press, 1977, esp. Ch.3.

10. Barrington, Moore, n.8, p. 418.

capitalist enterprises contributed only a small fraction of India's economic production. Moreover, even today, India remains a largely poor, agrarian society; nearly three-quarters of its population lives in villages, and the majority of production and employment is generated through agriculture. Thus, neither capitalism nor industrialization can be considered the primary force behind India's democracy.

Democracy is better understood in Indian climate with a proper understanding of modern political traditions in India. Colonialism was the crucible of India's democracy. Early manifestations of colonial influence included the democratic inclinations of Western educated leaders like Nehru, internal democracy within the Congress led nationalist movement, and the participation of Congressmen in elections and legislatures prior to independence. Other lasting contribution of colonialism were traditions of constitutional government, freedom of press, an effective civil service, and an 'apolitical' armed force. It is not surprising, therefore, that when a panel of India experts - W.H. Morris-Jones, Girilal Jain, Ramasray Roy and Susanne Rudolph - were asked during the Princeton Conference to comment on the factors relevant to India's democracy, all of

them considered the political traditions inherited from colonial past to be important.¹¹

Apart from the colonial legacy and the political tradition of modern Indian political process and behaviour, the other important factor which has helped establish the democratic institution to the root had been the role perception and the role expectations of the committed India leadership. The healthy traditions which were the reflection of the past heritage and the capacity to receive the "new wind of change" were provided by the so-called 'elite of the INC' to the masses.¹² These democratic commitment found its first reflection in the adoption of the Parliamentary form of government just after the independence. Also, it provided for a group of competing elites to collectively share privilege and power. Nevertheless, these very leaders offered democracy to the Indian masses as a means of incorporating them into the decision-making process. The significance of this benign role of the

11. The Princeton Conference, "Opening Roundtable: Why and how have Democratic Institutions Survived in India", in Summary of the Proceedings of the Conference on "India's Democracy", mimeo; Woodrow Wilson School, Princeton University, pp.I-II.

12. Atul, Kohli, n.6, p.9.

early leaders is highlighted by the contrasting situation later created by Indira Gandhi's Emergency.¹³

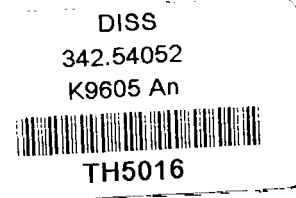
Within the framework of political practices and Indian experience with the democratic functioning, it is well understood that our experience of forty seven years have shown that we have adopted a middle path between capitalism and communism. The grassroot politics of our state still has its own ethos and norms of behaviour to influence the political arrangements. Even the so called socialistically inclined leaders have realized that a democratic political order needs a 'working arrangements' with those who control property and production.¹⁴ This alliance was clear with regard to the economic performance even before independence; since independence, India's industrial and business houses have often benefited from the government's economic activities. This is therefore a clear indicator to the fact that economic activities within our arrangements have equally influenced the socio-political performance. The

13. Mayron Weiner, "The Wounded Tiger: Maintaining India's Democratic Institutions in the New Commonwealth", ed. Peter Lyon and Jim Manor, Leicester: Leicester University Press, 1983.

14. Atul, Kohli, The State and Poverty in India: The Politics of Reform, Cambridge, Cambridge University Press, 1987, Ch.2.

process of economic development has mobilized people out of their traditional social niches which have been politically consequential in the development of democracy.¹⁵

III



The constitution of India recognizes and accepts the right of the people to participate actively in the governance of the country. This participation in public affairs has to be on an organized basis. Thus, political parties, as organized media for the conduct of public affairs, plays a vital role in the parliamentary set up of the country. By cultivating public opinion and educating the citizen about political issues and their consequent responsibilities, political parties try to win mass support and become a connecting link between government and public opinion. A political party, in the context of parliamentary democracy, has to seek a majority, form a government and fulfil the mandate

15. Kohli, Atul, n.6, p. 12.

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of the people. To perform its role within the legislature, parties have to spread their role within the legislature, parties have to spread their ideas of influence and win support and approval of a majority of the people to their programmes and methods.¹⁶

In this context, party system, as we have it today, is very different than that in the past. Understanding the nature of different political parties and political system in which diverse parties compete freely for mass-electoral support are increasingly hard to find in less developed nations. India after four decades of self-governance and ten general elections, still qualifies under the aegis of competitive political party system.¹⁷ The system has been largely shaped by the pluralism and cultural diversity of the country, the traditions of the nationalist movement, the contrasting styles of party leadership, clashing ideological perspectives and the character of political institutions created after independence. These forces have combined to

16. James, Manor, Parties and Party System in Atul Kohli (ed), India's Democracy: An Analysis of Changing State-Society Relations, Orient Longman Ltd., 1991.

17. James, Manor ed., India's Democracy, Princeton, Princeton University Press, 1988, p.62.

produce a highly fluid and fragmented multi-party system. Initially, India's social and cultural diversity was unified under the umbrella of the nationalist movement. Gradually, the party system fragmented. A process of alignment and re-alignment took place both between and within parties as social stratification was slowly altered by economic and social changes, shifting personal loyalties, and the impact of mass politics. Increasingly, the powerful arithmetic of caste, community, language and region lay behind party system.¹⁸

The shift which occurred towards multipartism was, however, not accompanied with the changes in basic assumptions of the parties and a single majority party continued to dominate the Indian politics. This paradox was the clear manifestation of the legacy of the nationalist movement. The inherent tendencies towards fragmentation both within and between parties surpassed the norms of political necessity, programmes, and ideology. The resulting pattern of

18. Robert, L. Hardgrave (Jr) & S.A. Kochanek, India: Government and Politics in a Developing Nation, Fourth edn. Hartcourt Brace Jovanovich Publisher, Orlando, Florida, 1986, pp. 188-92.

factional alignment or coalition became tenuous and subject to the threat of defection and realignment.

Although Indian parties have repeatedly split, combined, recombined and changed their names, electoral behaviour is often stable than the fluidity of the parties would indicate.¹⁹ There remains a remarkable continuity in major political tendencies. Also, at the conceptual level, all the parties have often tried to align themselves with a particular set of ideologies. The organizational arrangements have often tried to accommodate and seek the electoral support on their 'ideological leanings'. Supporting the ideological basis of any party, Duverger, with some reservation finds it good to analyse the real nature and character of any political party. He states, "There are three chief factors common to all countries: Socio-economic, ideological and technical. The first is mainly concerned with the influence of class structure of political parties and there is no doubt, that this influence is very great. The division of European parties in the 19th C into conservative and liberal can be described as the opposition between landed aristocracy and industrial, commercial and intellectual middle class; the appearance of

19. Robert Hardgrave, n.18, p. 193.

socialist parties at the beginning of the 20th C coincides with the entry of the working class into political life ... to a certain extent political ideologies themselves correspond to class attitude... The most decisive influences...are aspects of life of the nation such as ideologies and particularly the socio-economic structure".²⁰

In the same vein, Professor C. P. Bhambhri says that "The Socio-economic structure in India is characterised by the domination of the capitalist and feudal classes. At the same time, due to universal franchise, the general elections, and the contradictions of the capitalist way of development, workers and peasants are emerging to assert their right to get social justice. Indian politics represents a conflict between the entrenched and the emerging forces. The objective situation is one of the "crisis" and the struggles for vested interests of this power has gained momentum. In this context, ideology serves the class interest to defend and propogate their vested interest in Indian politics".²¹

20. Maurice Duverger, Political Parties: Their Organization and Activity in the Modern State, Methuem, 1964, pp. 204-5.

21. Bhambhri, C.P., Political Process in India (1947-1991), New Delhi, Vikas Publishing House, 1991, p.48.

Although, we commonly assume parties to be the product of earlier cleavages, we have less sense of the ways in which party system changes. Development in the recent past has raised questions about both the durability of party system and the clarity of the lenses through which we view them. The continued erosion of strong party identification, wider swings in elections and the increasingly visible role of political violence is not only a generational realignment, but rather a new phenomenon, the dealignment of electorate and the decomposition of party system.²² Confronted with unanticipated developments, scholars began searching for new paradigm under which to subsume them and the focus of attention was shifted to the organisational base of the party system.

IV

In India, like any other country, the party system is a product of its historical roots, civic traditions, cultural orientations and economy.²³ The

22. Steven, B. Wolowitz, Parties and Parliamentary System in Liberal Democracies, London, Routledge, 1988, pp. 1-4.

23. Rajni Kothari, Politics and the People: In Search of Humane India (2 Vols.), Delhi, Ajanta Publications, 1989.

character of state, the diversities of regional culture, the wide geographic spread of the country, the demands of social change and economic development affect the character of party system. Most importantly in this context, the party system plays the role of a political instrument of socio-economic change. It mobilizes people not only for electoral politics and for winning of seats but for building awareness and enthusing people for nation-building and democratic identity-building.²⁴

The leading party of national movement, the INC, since its inception in 1885, passed through three major phases of political evolution. First, it was a platform (1885-1904); then a forum (1905-1918), and finally a movement (1919-1947). As a platform of the middle class professionals and Western educated merchants, landlords and lawyers, it was mainly concerned with concessions and reforms of legislative council to give greater representation to Indians. In 1905, the organization acquired a nationalist character. Through the conflict between the 'idealist' moderates and the 'militant'

24. Rasheeduddin, Khan, People and Politics: The Indian Experience, ed. R.C.Dutt, Lancer Publishers Pvt Ltd, 1992, pp. 5-6.

extremists, the Congress emerged as the centre of the nationalist struggle. The emergence of Gandhi on the nationalist scene in 1915 transformed the Congress into a mass movement that coalasced many strands: class, regional and ideological. As a multi-class organization, Congress was able to draw the support of peasants, landowners, businessmen and workers. After independence, the Congress was transformed from a movement to a distinct political party, and it remained the dominant ruling party for nearly three decades.

The Congress party, the vehicle of the national movement, acquired pre-eminence in public consciousness as a party committed to the protection and promotion of national interests. The Congress pursued its politics in the framework of pluralism or what can be described as the principle of consensus and compromises. Pluralism enabled the party to accommodate a wide range of interests. This approach derived strength from India's diversity and genius for absorption of various cultural currents. The emphasis on consensus was certainly part of the political make up of the first generation leadership and the founding fathers of Indian constitution, who established the base of political

democracy and recognized the pivotal role of the state in social transformation.²⁵

However, to have a full understanding of the nature of party system in India, it is important to delineate the changes that have occurred within India's parties, especially the Congress party and within the party system since independence and to explain how forces within the sphere of party competition have contributed to those changes. The classic study of Rajni Kothari and W.H. Morris-Jones on party system alongwith many scholars have tried to study these changes in three explicit phases from 1947-1967, 1967-1977, and 1977-1984. To adopt that view in the contemporary situation, to overlook, a number of basic changes in Indian politics over the last two decades that have substantially altered conditions within parties, relations among parties, and partly, because parties have provided the main links between state and society, state-society relations. Some of the changes were disguised by the result of 1984 elections, but they remain realities nonetheless.

25. Rasheeduddin Khan, n.24, pp. 7-8.

FROM 1947-1967

Rajni Kothari and Morris-Jones described the phase as a 'dominant party-system'²⁶ where multi party system existed and free competition among parties occurred but in which the INC enjoyed a dominant position, both in terms of number of seats that it held in parliament in New Delhi and the state legislative assemblies, and in terms of its immense organizational strength outside the legislature. This dominance was primarily because of its organizational standard which was very strong; and which subsequently enabled it to dominate the action of bureaucrats who were charged with the implementation of policies and laws at regional and, especially at sub-regional level.

Moreover, this dominance trend was further strengthened by the phenomenon of lack of organized opposition parties. The opposition, whatever existed did little to prevent the Congress from obtaining sizeable majorities in the legislatures despite the ruling party's failure on most

26. Rajni, Kothari, 'The Congress System' in India Asian Survey, December, 1964, pp. 1151-1173; and W.H. Morris-Jones, 'Parliament and Dominant Party: The Indian Experience, and Dominance and Dissent: Their Interrelation in Indian Party System', in Morris-Jones, Politics Mainly Indian, Madras, Orient Longman, 1978, pp. 196-232.

occasions to gain a majority of valid votes cast. The ruling Congress party was a 'party of consensus' and the opposition parties were 'parties of pressure'.²⁷ Nevertheless, opposition parties played a distinct role in influencing a section within the Congress. More than the opposition parties, groups within the Congress in conjunction with the opposition parties, assumed the role of opposition, often reflecting the ideologies and interests of the other parties. Thus, "it was within the Congress, and not between the Congress and the opposition parties that the major conflicts within Indian politics occurred".²⁸ Congress was more important than that, and arguably more important than all of the formal institutions of state put together.²⁹

In the system, the Congress occupied not only the broad centre of political spectrum, but also dominated the left and right tendencies as well. Because the dominant party occupied an enormous ideological space, it relegated the opposition parties to the margins of both the political and

27. Rajni, Kothari, "The Congress System", n.26, p.1162.

28. Ibid, p. 1163.

29. James, Manor, Parties and Party System, in Atul Kohli, ed. India's Democracy, Orient Longman Ltd, 1991, p.65

the party system. To make the matter worse, these parties often found themselves on opposite sides of the Congress, which killed any hope of their making common cause against it.³⁰ To save themselves from absorption by or the loss of defectors to the Congress, the opposition parties tended to develop rigorous ideologies and tightly disciplined organizations.

Also, at the same time, Congress managed to maintain its hegemony, apart from the support derived from its social background and organizational strength, from its effectiveness in distributing the resources, which it acquired from its control of state power, among existing and potential clients in exchange for their political support.³¹ The same skill at allotting patronage also enabled Congress to co-opt and absorb within itself, groups whose grievances had been ventilated through agitations launched by the opposition parties. This was reinforced by the Congress policy of "neutralizing some of the more important sources of cleavage disaffection"; and by leadership's tendency "to preserve democratic forms, to

30. Morris-Jones, "Dominance and Dissent", n.26, pp. 219-220.

31. James, Manor, n.29, p.66.

respect the rule of law, to avoid undue strife", and to show "great sensitivity on the question of respect for minorities".³²

FROM 1967-1977:

The second phase extended from 1967 to the defeat of Congress party at the general elections of 1977 which occurred in the immediate aftermath of the Emergency of 1975. The malaise of defection or switching over of loyalty from one platform to another which had gained momentum between 1962 and 1966, became important in the further fragmentation of the party system, a process that turned dissidence and criticism within the party to defection outside the party. Such fragmentation continued even after the general elections in 1967; where Congress lost power in six states and were toppled from three more states after the elections, following further defection from the legislative party in these states.³³ Analysing the post-election scenario of 1967, Morris-Jones and Rajni Kothari argued that, "the socio-economic and demographic profile of polity

32. Rajni, Kothari, n.26, pp. 1168-70.

33. Rajni, Kothari, Politics and the People, n.23, p.181.

is changing rather fast... The mobilization of new recruits and groups into the political process... has given rise to the development of new and more differentiated identities and patterns of political cleavages... (This gave rise to) the expectation of freer political access...and a greater insistence on government performance. Intermediaries and vote banks, while of continuing importance, have become increasingly circumvented as citizens search for more effective participation in the political market place and develop an ability to evaluate and make choices".³⁴

The competitive 'defectors market'³⁵ had their own justifications against the normal ethics of political chameleons. It is easy to forget that this was, for our minds tend to rush onward to the dramatic splitting of the Congress in 1969, and Mrs Gandhi's subsequent surprises which gained her the political initiative and the great election victory of 1971. But defection continued in the aftermath of 1967 elections. Both Kothari and Morris-Jones have argued two important points in this connection:

34. Rajni, Kothari, Continuity and Change in Indian Party System, Asian Survey (Nov' 1970), pp. 937-48, and W.H. Morris-Jones, "From Monopoly to Competition in India's Politics", n. 26, pp. 144-59.

35. Morris-Jones, n. 30, p. 135.

- (i) Defectors flowed both ways, both into and out of Congress. More flowed out, however, than in, causing the fall of Congress government in three states.³⁶
- (ii) The highly disciplined, ideologically oriented parties of the Marxist left and the Hindu chauvinist right remained almost immune to this new trend.

As a result, the Congress' hegemony was challenged and the success for the long frustrated and splintered opposition first came at the state level in 1967 with the formation of Samyukta Vidhayak Dals, broadly based multi-party coalition government which ended Congress control over half the states in India. The trend continued with the historic split in the Congress in 1969, and the second round of defections that followed the lifting of emergency in 1977. Congress defectors formed a number of new parties: the Bhartiya Lok Dal (BLD), the Congress(O) and the Congress for Democracy (CFD). The Congress fragments united with the Socialist and Jan Sangh in 1977 to form the Janta Party that brought an end to 30 years of Congress rule.

36. Ibid, p.155.

Also, it was observed that the parties to the far right and left tended to remain 'hard' in what they retained tough shells through which people did not pass in and out and in that they maintained their organizational integrity through centralization, discipline and ideological consistency. They also retained narrower social base than most of the other parties in that period and narrower bases than the CPI (Marxist) and the Jan Sangh/BJP have developed in the post-1977 years. They nonetheless moved very cautiously along the road to more moderate policies, a road down which, Stanley A. Kochanek observed, other opposition parties were motoring once the possibility of power presented itself.³⁷

Though, the situation in aftermath of 1967 reflected one of ambiguity, blurred lines, flexibility and flux but nonetheless the stability of the regime appeared more assured than ever before because the regime had moved away from any degree of dependence on one outstanding leader. The reconciliatory approach was followed to mark the democratic success in Indian political system which was in continuous strains. Mrs Gandhi's decision to split her country's central political institution produced such

37. S.A. Kochanek, The Congress Party of India, Princeton, Princeton University Press, 1968, p. 446.

conditions in 1971, that altered the shape of the party system at that election. Morris-Jones in his analysis of post-elections Gandhi's victory, found that 'the end of dominant party had been too readily proclaimed in 1967 and that now it is back'. At this stage, Mrs Gandhi adopted a more confrontational posture, both towards opposition parties at the national level and towards opposition controlled governments in various states.³⁸ She also took a more aggressive line with her own party, and this soon produced what S.A. Kochanek has rightly called "a new political process" as the Prime Minister created "a pyramidal decision-making structure in party and government". Although, this "prevented threat to her personal power, it tended to centralize decision-making, weaker institutionalization, and create an overly personalised regime. Moreover, the new political process proved unable to manage the tensions and cleavages of a heterogenous party operating in heterogenous society, federally governed. A major crisis in the system

38. Bhagwan D. Dua, Presidential Rule in India, 1950-74: A Study in Crisis Politics, New Delhi, S. Chand, 1979.

followed.³⁹ Thus, the new system entailed the abandonment of intra-party democracy. Positions in the Congress organization at all levels were invariably filled by nominations rather than elections. Above all, institutional decline accompanied by decline of state based leaders and the replacement of regional structure of support by the central leadership adversely affected the scheme or arrangements of Indian politics".⁴⁰

Disgruntled with its own failure and the aggressive behaviour of ruling party provided an outlet for the opposition parties to reunite themselves against the Congress resurgence. Evidently, Congress by now had followed a broad-based strategy consisting of redistributive policies such as nationalisation of banks, abolition of privy purses and 'Garibi Hatao', all geared towards widening its support. But, this did not happen for a variety of reasons. The Congress' failure to alleviate poverty, economic crisis of 1970's, serious rise in inflation, food shortage and massive unemployment, led the opposition to start countrywide agitations. Jay Prakash Narayan, student

39. S.A., Kochanek, "Mrs Gandhi's Pyramid: The New Congress" in Indira Gandhi's India, ed. Henry C. Hart, Boulder: Westview, 1976, pp. 104-5.

40. Ibid, pp. 109-11.

movement in 1974-75 in Bihar provided for the immediate substance to the already volatile situations. Other noticeable agitation included Nav Nirman agitation of Gujarat and the All-India Railway Strike in 1974.

Mrs Gandhi's adaptability to the new challenges was at stake and new forces had well accumulated within the party circles to influence her decisions. In such a situation she took recourse to first ever national Emergency on June 26, 1975. The decay of the political party and the system had begun.⁴¹

FROM 1977-1984

The third phase in the evolution in India's party system extends from the defeat of the Congress in the 1977 elections to the restoration of its rule by her son Rajiv Gandhi, in December 1984. The years from 1977 to 1980 were marked by abrasive inter-party conflict and fragmentation within parties. The emergency had awakened the voting pattern of Indian electorate and society had become increasingly aware of the logic of electoral

41. James, Manor, Party Decay and Political Crisis in India", Washington Quarterly, (Summer, 1981), pp. 25-40.

politics, of the secrecy of the ballot, and of notion that parties and leaders should respond to those whom they represented. It was more advanced among the poor.⁴² As a result, disadvantaged rural dwellers largely ceased to vote accordingly to the wishes of the land-owning groups that continued to dominate life in the villages. Voters became more aggressive and competitive, and their appetites for resources from politicians grew. Interest groups crystalized and came increasingly into conflict, so that it became harder to operate a political machine that could cater to every organised interest, as Congress had very nearly done in the Nehru years. India became increasingly democratic and increasingly difficult to govern.⁴³

The emergence of Janata Party in 1977 elections had a democratic reversal of Congress' fortunes. But, this too could not maintain foothold as essentially Janta leaders could not monitor themselves in harmonious relations. The very outcome presented itself as a force against the emergency errors of Mrs Gandhi, rather than a political

42. John O. Field, "Consolidating Democracy: Politicization and Partisanship in India", New Delhi, Manohar, 1989, and D.L. Seth, (ed) "Citizens and parties: Aspects of Competitive Politics in India", Bombay, Allied, 1975.

43. James Manor, n. 29, p.72.

party based on any clear, defined ideologies, principles or leadership. The conflicting interests of the parties and factions that constituted the Janata Party also became evident from the very start. The assertion of some scholars that a 'nebulous two-party system' had originated on the Indian soil were also belied. The Janata Party was hastily assembled coalition of different opposition groups including the Jan Sangh, The Bhartiya Lok Dal, the Socialist Party and the Congress for Democracy. Given the heterogenous composition of the Janata and the strong ambitions of its leaders, the government was unable to achieve cohesion and unity. The five parties in Janata was a diverse lot, often in conflict with each other. They could not transcend their past rivalries and build a new party.

The obvious results followed in loosening of ties between the national and the state levels within both the Janata Party and the political system. The faction that tended to dominate the Janata Party in the national Parliament were antagonistic to those that held sway in several Janata controlled states. This antagonism set the national and the state governments at loggerheads on some important questions, a trend that was reinforced by friction between Janata regime in New Delhi and opposition controlled government in several other states. This made it

impossible to reverse the tendency of the Indian federation to become an increasingly loose union.

The Janata Government disintegrated in mid-1979, many of the constituents that had formed it also splintered. At the same time, the Congress had a second split in 1978, leaving the array of fragmentary parties, many of which were little more than personal cliques presided over by individual politicians, Indira-Congress which emerged at this juncture only appeared as a coherent national party-even though its own organization was in considerable disarray. This image helped the party to take advantage of the strong popular reaction against the friction and disunity in the Janata Government and win the 1980 general elections. The assassination of Indira Gandhi on 31 October 1984 followed by the thumping victory of the Congress (I), made opposition unity still more difficult to achieve. The victory of Congress(I) led many observers to write off the opposition parties, only to see that event following in late 80's were clear indications of such premature judgement.

S.A. Kochanek, from his indepth study of political behaviour found that some opposition parties possessed considerable promise and potential than was suggested by the 1980 and 1984 results. The Communist Parties and the BJP retained the support of the important groups and possessed

an effective organization and ideologies as well. Another political party, the Bhartiya Lok Dal, that represented the interests of the peasant proprietary groups in North India, continued to play an important role both in the Hindi-speaking states and at the centre. The victory of the Congress in 1980 elections with a support of 43% votes clearly discerned from the trends. The Janata Party was the second largest party in nine states. Lok Dal was the second largest party in Haryana, Uttar Pradesh and Orissa, CPI (M) was the largest party in West Bengal, Tripura and the second largest party in Kerala. More importantly, long term trends indicated both erosion and severe fluctuations in Congress (I)'s support base. Though Congress' support base was still quite widespread; class, community and regionwise as compared to other parties, there was evidence that Congress had begun to loose its base in the Hindi heartland which makes up 42% of the parliamentary seats and its support in Muslim dominated constituencies was also reduced. These trends indicated an erosion of Congress' regional and minority support base.⁴⁴

44. S.A. Kochanek, n.39, pp. 107-9.

1984 ONWARDS

The final phase in the evolutionary scheme of Indian party system commences from the eighth general elections in the last week of 1984. The new political situation which emerged was one in which the Congress was dominant at the centre but not in most of the states. Though Rajiv Gandhi initially proved to be accommodative to the opposition and other regional forces, he could not seek independence from the clutches of the organizational incapacity to which the Congress had suffered in the recent past. A new phenomenon of sympathy 'wave' had entered the Indian political system, bringing more uncertainty to the national elections in particular and regional in general. This also indicated the decline of the party system in the post-1971 period, making parties rely on make-shift electoral arrangements populist symbols and rhetorics for gaining support. Personality, charisma and image had acquired greater salience than party identification and party loyalties. The 'Indira wave' in 1971 Lok Sabha Elections or the emotional support extended the Congress and Rajiv Gandhi after the assassination of Mrs. Gandhi in October 1984 and the sympathy factor for Congress (I) after Rajiv's assassination in May 1991, helped produce electoral majorities in a fragmented multi-party

system where national parties did not command widespread support across all regions of the party. Moreover, the persistence of the sympathy phenomena since 1971 suggests that parties have failed to convert the electoral gains from an occasional 'wave' into a stable support base for well organised purposive work and concerted governmental action between elections. Such an erosion of the party system has opened the Indian polity to forces of fragmentation and disintegration.⁴⁵

A significant aspect of the post-1984 political situation has been its unpredictable and uncertain nature on account of large swings of votes from one party to another. This has created conditions for regional factors to play an important role in the determination of patterns and changes in party support. From the mid-1980's, the regional parties operating within the federal system appear to have emerged as quite important in providing leadership and policy alternatives in the states. Much of the opposition to the centrist parties, i.e., the Congress and the Janata Dal, is being represented by combination of regional and national parties. DMK, Akali Dal and the National Conference provided such an alternative in the 1960's and 1970's. More

45. James, Manor, n.29, p.83.

recently, Telegu Desam in Andhra Pradesh, AIADMK on its own or in alliance with the Congress (I) in Tamil Nadu and Janta Party in Karnataka, have offered stable and at times, a distant alternative. Another illustration of the growing importance of regional parties can be seen in the part played by them in the formation of National Front government after the 1989 Lok Sabha elections.

More recently, the new strategy of mobilization of majority and minority communities have surfaced on the Indian soil. These forces have even helped playing down the social and economic issues at the expense of communal ones. Communal themes especially themes of Hindu chauvinism, that appeal to the Hindi-speaking states have gained currency in political speeches and campaigns. The beneficiary of such communal war that swept the country in 1989 was the BJP and not the Congress. The significant gains made by the BJP in the 1989 Lok Sabha and 1990 State Assembly elections is an indication of the political appeal of communal and revivalist movement in the North and Western India.

More importantly, the post-1985 Centrism of the Congress under Rajiv Gandhi's leadership notwithstanding its promising 'anti-broker' campaign, soon degenerated into the 'Twenty-first' century elitist conceptualisation which made no or little sense to the mass of the people. This

catchy metaphor could prevent the disillusionment of the people with Rajiv Congress Centrism. In summary, the Congress Centrism from 1980-1988, though articulated through the attractive concepts of 'growth, productivity and modernization, only resulted in the legitimation of a techno-managerial state'.⁴⁶

The non-Congress Centrist parties which professed faith in the Janata Party, JP and Lohia legacies were awfully fragmented between 1980-88. The formation of the Janata Dal in the wake of 1989 elections, provided for only organizationally fragile and representing a high political discourse of anti-authoritarianism, social justice and decentralization enriched by the idea of Gandhi, Jay Prakash Narayan and Lohia.

'Decay' which started in post-1980 phase has also entered its climax where except for the Congress (I), none seems to be capable of providing any stable alternative. The 'market polity'⁴⁷ is witnessing the greatest bargaining in the skill and purchase of the defectors. The defection has raised many ugly situations for the Indian party system to be free from malaises. Though, James Manor, supports the

46. Rajni, Kothari, Seminar, Issue 309, Nov. 1992.

47. Jones-Morris, n.26, p. 156.

proposition of defection if it is primarily the result of discontent among legislatures supporters over unacceptable treatment by the party to which he/she originally belonged and provided the switch to another party, mainly intended to obtain better treatment. Such defections represent regional responses from social or sub-regional groups to party's misdeeds or omissions and serve to remind parties of the need to maintain consensus.⁴⁸

Many defections in the period that Morris-Jones described were not of that nature, however, many, indeed appear to have been undertaken by individual legislatures to enhance their position in terms of power, money, or both.⁴⁹ Defections of this kind are clearly part of the 'Market' polity, for bargains of a sort are being made. But such privateering is likely to impede the maintenance and restructuring of consensus, for such defectors are responding to a logic other than that which governs the maintenance of consensus. The defection that became such a prominent feature of Indian politics in 1980's tended overwhelmingly to be a response to large cash payments by the Congress (I), which as the ruling party could alone

48. James, Manor, n.29, p. 90.

49. S.A., Kochanek, S.A., n.40, pp.293 and 447.

command such vast financial resources. In fairness, however, it should be emphasised that more than a few defectors and near-defectors were turning to Congress (I) out of frustration with the unresponsive leaders.

Analysing the perspectives of the Indian states in socio-economic dimension, the shift which occurred in relation to the political processes have in all comprehensiveness reflected the tendencies of the system moving towards maturity.⁵⁰ The parties' loyalties, though are still far from the stable orientations, it continues to be in the realm of various fluctuations. The defection which resulted as a constant blow to the maturity process of Indian political parties, still dominates the political domain of our party politics.

In order to view the 'defection' in the present state, the next chapter would be helpful to understand the deeper implications of such practices in Indian politics. The anomalies at both the conceptual and functional dimensions would be the part of analysis in further scheme of writings.

50. Rajni Kothari, n.46.

CHAPTER II

POLITICS OF DEFECTION IN INDIA

The adoption of institution of parliamentary democracy in India is modelled on the result of British affiliations and experience. The early rulers of free India belonged to the generations that had toiled hard to win freedom and had placed high values of political morality above everything else including their personal interest. But these principles could not be sustained for long. Soon after Nehru's death, the political water in India started getting polluted by many a corrupt, immoral, pernicious malpractices by the new breed of greedy politicians who placed the lust for power above every moral values which their predecessors held so dear.¹ Also, there is no doubt that various ills afflicting the Indian polity today have their genesis in the aforesaid malady. Of these ills and immoral practices 'defection' is one that had emerged on the Indian political scene, and has assumed such

1. Inderjeet Gill, "Concern of Politics: The Indian Context, (ed.) by N.S. Gehlot, "Trends in Indian Politics, New Delhi, Deep & Deep Pub, 1988.

alarming proportions as had led some observers to term it as a contagious disease that threatens to eat the very fabric of our political system.

Defection is an inevitable corollary of the party system especially in the multi-party system. So the politics of defection is not a new phenomenon in democracy. Its origin in the democratic set-up developed right from the emergence of political parties.

In India, there is nothing novel in political defection except their magnitude. In the 1937 elections held under the Govt of India Act, 1935, the Congress was returned with absolute majorities in the United Provinces. However, the Chief Minister, G.B. Pant, deemed it proper to induce some members of the Muslim League to cross the floor and join Congress. One of them Hafiz Mohammed Ibrahim, was included in the Congress ministry. The game of political defection in Indian politics had begun not on the principle of ideological basis but in the lure of money, power, berth, ministership, etc. This crossing of floor made little sense in the contemporary politics of India. Membership of the party was regarded as a 'job in company'², when a rival

2. N.S. Gehlot, Trends in Indian Politics, New Delhi, Deep and Deep Pub., 1988, p. 161.

company offered a greater prospects, etc., the legislators promptly crossed the floor for the chance of betterment. It should, however, be noted that the noticeable point in the pre-1967 period was that defection remained an unimportant affair in our party politics. Magnitude of political defection rapidly increased in the post-1967 period, that too, for petty political gains.

The liberal interpretation of the term 'defection' is very simple. According to the Oxford dictionary, "it is the act of transferring allegiance to another country, party, etc." But its practical implications have been very intricate. Political defection has neither been typical of any age or any place. In the Monarchy also, political defection had been taking the form of the sale and purchase of the loyalty of nobles and kings. But in a democracy, it becomes more prominent because it is the representative of the people who have all the say in the government. People's sovereignty in a democracy rests upon the act of their representatives. Therefore, it is futile to argue about the presence or absence of political defection in any particular system. Nevertheless, political defection has always been considered immoral and abhorrent. It is more so because most of the instances of political defection have taken place in the lure of money and power.

To define defection aptly, like any other political term, would not be quite easy because the difficulty of properly defining the context of the words in politics leads to controversies, because "most of the controversies, especially in the field of politics, are incapable of any fruitful results, because though the disputants are using the same words, they do not mean the same thing. This happens when words like 'defectors' are used without their context being properly defined in politics".³

According to a study by the Ministry of Home Affairs, "defection" means the "transfer of allegiance by a legislator from one party to another political party or (an) identifiable group".⁴ H.M. Seeravai defines it as "falling away from a leader, party, religion or duty; desertion to another country".⁵

In Shanti Lal Shah's opinion, a defector may be defined as "a person elected on a party ticket who later changes his political party allegiance, but

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3. J.B. Kriplani, "Fighting Defection" in Sunday Standard, 2 February, 1969.
 4. Research Planning and Review Division, Ministry of Home Affairs, Government of India, Defection, 1968.
 5. H.M. Seeravai, The Constitutional Law of India.

does not thereupon resign his seats and seek re-election on the basis of his new political faith".⁶

In the wake of large number of defections in 1967, that severely affected the Congress Party, the Fourth Lok Sabha appointed a Committee on Defection under the Chairmanship of the then Home Minister, Y.B. Chavan, that defined defection in the following terms:

"An elected member of Legislature who had been allotted a reserved symbol of any political party shall be deemed to have defected if, after being elected as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State or a Union Territory, he voluntarily renounces allegiance to, or association with such political party, provided his action is not in consequence of a decision of the said political party".⁷

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6. Shanti Lal Shah, Can there be a Law on Defection? in Amrita Bazaar patrika.
 7. The Times of India, September 29, 1968.

However, in a most authoritative style, S.C. Kashy expresses the malady of defection in following words:

"Unless otherwise stated, the term 'defection' in the study should be understood to mean any change of political label and should include all cases such as:

- (i) that of leaving a particular party after being elected as a legislator on its ticket and joining another party;
- (ii) of resigning from the party but remaining independent thereafter; or,
- (iii) of joining a particular political party being elected as an independent.

Legislators who vote against their party in the Legislature on basic issues without actually resigning from the party should nonetheless be deemed to be defectors, irrespective of its dictionary meaning. Here, the term 'defection' would thus mean to include both an act of disaffection with one party and the development of an independent platform as also of developing a new political

allegiance either by outright joining the other party or by voting with it or against one's own party. It would cover changes of party affiliation both from the opposition to the government side or vice-versa as also changes as between the parties on the same side of the House, i. e., between the constituent units of a coalition government or between the different parties sitting on the opposition benches".⁸

An act of political defection may be said to signify leaving a party and then returning to the original party to become a non-partyman; leaving a party but continuing to support the same as a liberal politician; leaving a party to find another party or group; leaving a party; founding another and then merging it with the original party; and leaving a party; founding another and merging it with some other party or group. Thus, "the politics of defection begins with the shifting of one's political allegiance, culminating in the severance of his connection from a party with any motive whatsoever".⁹

8. S.C. Kashyap, The Politics of Defection; "A Study of State Politics in India" National, Delhi, 1969, pp. 11-12.

9. J.C. Johari, Reflection of Indian Politics, New Delhi, 1974, pp. 40.

The All-Parties Committee on Defection after having agreed to the definition of a defector at the instance of Mr J.P. Narayan has defined a defector as "an elected member of a legislature who had been allotted the reserved symbol of any political party can be said to have defected, if, after being elected as member of either House of Parliament or of a State Legislative Assembly or Legislative Council or Union Territory, he voluntarily renounces his allegiance to or association with the party, provided his action is not in consequence of a decision of the party concerned." 10

A similar connotation was made in intended, abortive bill that was proposed to have been introduced in Parliament in 1972, which contained a provision to amend the Representation of People Act of 1951 and Article 74 and 163 of the Constitution. One of the draft amendment to the Act sought to define a defector thus, "if any person who has been elected as a member of the either House of Parliament or Legislative Assembly or Legislative Council of a State, and who was allotted the reserved symbol of political party in respect of such election renounces (whether by words, conduct or in any other manner), after the said elects allegiance to, or association with such political party, he

10. The All Party Committee on Defection.

shall, upon such renunciation, be disqualified for being a member of the House of Parliament, Legislative Assembly, Legislative Council to which he was so elected".¹¹

Thus, defection covers almost every case in which the legislators has changed his party label and joined either the government or the opposition, but the motive should be some sort of personal gain, may that be in form of name, fame, office or even inner satisfaction of throwing out of office those who were opposed to him or a group of persons. An act of defection becomes complete when a person has completely severed all connections from the party on whose ticket he was elected and completely disown its principles and leadership. Politics of defection was motivated by no other factor as strongly as some consideration of reward. The Chavan Committee on Defection says:

"An elected member of legislature who has been allotted the reserved symbol of any political party can be said to have defected, if, after being elected as a member of either House of Parliament or of Legislative Council or the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to, or association with

11. Amendment to the proposed Representation of the People Act, 1972.

such a political party provided that his action is not in consequence of a decision of the party concerned".¹²

II

Analysing the political defection in Indian system, it becomes quite imperative to ask as why have defections continued to dominate the moral of our political leadership who otherwise pretends to be the saviour of democratic norms? Also, it is pertinent to note that the question of every kind was raised during the independence movement and later at various platform, but the question of defection never got any place in any kind of debate. Was it because the political morality of those times was too high or was it because leaders of those times had unflinching faith in the self-corrective mechanism of democratic system? At the time of Constitution-making also, members of the Constituent Assembly discussed the Constitutional aspect of the government bit by bit, but then too, nobody amongst them

12. Committee on Defection, Report of the Committee, Report of Lawyers Group and Explanatory/Dissenting Notes by members, Ministry of Home Affairs, Government of India, New Delhi, 1969.

raised the question of defection. It seems that the overshadowing figure of Nehru and more so the Indian National Congress, blinded our forefathers into complacency. Moreover, the interests and priorities were shifted to grabbing power and not the welfare of the down-trodden. But nevertheless, the self-correcting mechanism of our democratic system prevailed and prevented the collapse of otherwise infantile institutions of our polity.

Also, it is interesting to note that the defection assumed serious proportions only after the stagnation in the Congress had set in. The Congress which was an umbrella party where divergent ideologies and opinions found shelter in the past, started severing the effect of accommodation and the dissidence to its survival became all the more phenomenal. Moreover, the Congress occupied the dominant position amidst a multi-party system. While opposition parties differed in several respects, they had one thing in common: the need to relate to the Congress Party. In this sense, India's political forces were seen as forming two political streams, Congressism and anti-Congressism.¹³ Apart from this, Nehru who strode the Indian political scene

13. P.M. Kamath, "Political Succession in India". Indo-British Review, 8: 3&4, 1979, p. 46.

like a colossus, in spite of being a true democrat, could not let the healthy opposition take its birth on the Indian soil. He also did not give Congress party any clear ideological base so that the opposition parties could have found the alternative arrangements. Ironically enough, the government continued to work under the aegis of democracy and the Indian National Congress without any strong opposition. Whatever opposition developed was considered as a case of dissidence against the Congress. This led to the unhealthy trend of sycophancy which further deteriorated the already fragile base of Indian party system. Defection became one of the greatest stigma on our political system.

The other causes which equally played the role in defection, however, can be analysed as follows:

Firstly, the Congress is a party of groups of individuals rather than of individual followers. Whenever a group felt alienated from the dominant group within the Congress party or that its interests were being ignored by the dominant group, the affected group defected to form a splinter party and staked a claim for a share of power in Congress or opposition led state governments. Secondly, while all political parties work to get into power, for historical reasons the Congress culture is a power culture. Thirdly, inter-party dissidence and inter-party defection have been

largely matter of the popularity of the Congress party. When its popularity has been high, dissidence within has proved useful in serving factional interests, but when it has been on decline, defection has been the rule of the day. Fourthly, the Congress has been neither an ideology-based nor a clear policy-based party. While the opposition parties have come to represent a particular shade of ideology or a particular policy or programme, the Congress is a Kaleidoscope representing all shades of policies and ideologies. Hence, within the broad spectrum of political parties, groups within the Congress or individuals or groups from the opposition parties have not felt any insurmountable ideological inhibitions in frequently changing the focus of their political loyalty.¹⁴

Apart from these manifest causes of allurements of wealth and power, there are also social and psychological forces behind it.¹⁵ The reasons for all these may be broadly summarised as below:

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14. B.L.Fadia, "Indian Government and Politics", Agra Sahitya Bhawan Publishers, 1991, pp. 392-393.
 15. S.C.Kashyap, The Politics of Power, National, Delhi, 1969, pp.87-88.

- 1) The existence of powerful lobbies and pressure groups aids defection and as a consequence brings about the birth of splinter groups in the grip of caste and communal considerations on Indian politics. According to former Supreme Court Justice, V.R. Krishna Iyer, all political parties, from the Congress to the Communists, promote communalism.¹⁶ Caste based political factions are able to secure representation in the state governments that they would not have received, if they had remained within the Congress.
- 2) The personality cult in India, i.e., charismatic leadership also induced defection. When individuals so prominently dominate the political scene, their followers defect as soon as their leaders, due to personality clashes decide to leave the party.
- 3) Political bossism is yet another subtle cause of defection in India. Some of the political leaders often try to dominate their legislators. Even the genuine criticism within the political parties goes

16. Times of India, August 10, 1982.

unheard causing for the affected members to defect and desert the party of their origin.

- 4) Greater difference between the status, emoluments and other benefits attached to the office of a Minister and that of an ordinary legislators, remains a constant grievance of the non-profiteering members.
- 5) Hypocrisy in Indian politics - the wide gulf between profession and practice, between the false ideas and realities in a country with such dismay poverty, unemployment, illiteracy, also causes for defection from time to time.
- 6) The long rule of the Congress party, both at the Centre and in States has been another cause of defection. Even during the heyday of its power prestige, it did not hesitate in roping in many eminent leaders of various opposition parties and groups to defect and thereby swell its ranks. Acharya Kriplani remarked, "From time to time, the Congress even when in majority, has tempted the legislators with the lure of office to leave their parties and join the Congress for no better reasons than to swell its members."¹⁷

17. B. L. Fadia, n.14.

7) In yet another explanation for the scope of defection is attributed to the general lack of character among the present day politician. Morarji Desai similarly remarked, "In adversity, great leaders emerge and in prosperity or complacency only Bhajan Lal, Bansi Lal will flourish".¹⁸ However, more than prosperity, it is complacency and general economic backwardness that explains, at least partly, defections. Those belonging to economically and socially backward classes often are found to be more prone to defect than others. Politics as a profession has been one profession in India where the least qualified people can think of improving their economic status in the shortest period. This approach to the politics as a vehicle of economic improvement has often led politicians to disregard all moral norms.¹⁹ The extent of corruption that is involved in the politics of defection was made clear by a senior functionary of the Congress Party, as though it was a matter of pride. He reportedly said that the press has "no idea about the

18. Morarji Desai Talks to Freedom First, "Freedom First", August 1982, p.15.

19. P.K. Kamath, Asian Survey, Vol.XXV, No.10. October, 1985, p.1046.

personal corruption that makes it easy to persuade members to cross the floor".²⁰

- 8) The presence of the independent candidates have also contributed to the cause of defection. These independents often keep their minds wide open on the question of their allegiance to the ruling party. The independents have often been party rebels who were denied the party 'ticket' for election by the party high command.

Thus, undoubtedly, unenlightened self-interest appeared as the most potent incentive that enthused the legislators to commit the political sin of defection, re-defection and counter-defection. The result was the formation, deformation and re-formation of governments in various states of the Indian Union.²¹ In this connection, the report of the Committee of the Governors, 1971 observed, "A good number of these defections take place because of the promise of the rewards of office or other official patronage - a circumstance which directly lends itself to indiscipline and political corruption". This was named as 'price

20. Sunday Observer, May 30, 1982.

21. S.C. Kashyap, n.15, pp.87-88.

theory'.²² It can therefore be concluded that all those frequent defections were the cause of political instability and these were seen as a sign of the freedom of legislators in choosing their party loyalties.

III

The fourth general elections (held in 1967), constitute a watershed in post-independence political history of India. The rock of monolithic Congress regime and its halved leadership had concealed underneath the realities of many operational weaknesses as also of basic inner strength and resilience of the Indian system. It also exposed the artificial level of political stability, democratic maturity and parliamentary sophistication at which the political system had so far appeared to be operating. The general contours of the political power-structure in the state were undergoing basic changes. The otherwise highly fragmented opposition saw in the situation an opportunity to seize

22. M.K. Tikku, Defection Unlimited, The Hindustan Times, January 5, 1980.

power and there began a process of non-Congress parties shedding their ideological edges and coming forward together to share power on the basis of what were called the agreed minimum common programme.²³

The problems of political defection had become so acute by now that in many states, governments survival constantly hanged between the whims and fancies of the elected legislatures. This led to political instability and delays in decision-making process at the state level. Moreover, there was no continuity in policies because each government which came to power followed its own policies, many a time undoing the work of previous ones. Coalition governments were formed and they continued to be unstable. The coalition which were least viable were formed in Bihar and Uttar Pradesh. Both included such heterogenous members as the Jana Sangha and the Communist Party of India. Discipline, so essential for running a government, was at a low ebb. The Chief Ministers were neither feared nor respected. They were no longer architects of a cabinet and were incapable of taking any vital decision on their own. In all, the office of Chief Ministership was devalued. This politics of defection created a lot of inconvenience to the

23. S.C. Kashyap, n.8, p.4.

bureaucracy and in a way made it very strong and powerful. Political morality, Constitutionalism, regard for political conventions, party discipline, and leadership frequently disintegrated. The parties became more factional at the state level and when the resolution of intra-party conflict was not possible, they fragmented.

In the past, the party which had benefited most from defections was the Congress party which had generally been in power. Now the defections were largely to other parties. Whoever had the patronage and spoils to distribute could most easily win over the independents and members of other political parties to their fold. The most organized and disciplined parties (the Jana Sangh and the two Communist Parties) probably had less than 25 defectors each between 1957 and 1968. Loose organizations such as Swatantra and the P.S.P. have had high defection rates between 1957-68 of over 80 and 100, respectively. But a large number of independents most of whom had been denied Congress party tickets, accelerated the pace of defection. Not being independents of any principles, they were prepared to trade their label and offer their vote to the highest bidder. A survey of the 'independents' members of State Assemblies of Bihar, Haryana, Madhya Pradesh, Uttar Pradesh, West Bengal, Rajasthan and Punjab, revealed that about 70% of them later

joined different political parties and thus, played a determining role in toppling and establishing new governments.²⁴

Yet another phenomenon that came to be observed on the political scene was the emergence of the large numbers of splinter groups that broke away from the Congress. These included the Jan Kranti Dal (Bihar), Bangla Congress (West Bengal), Jana Congress (Orissa), Janta Party (Rajasthan), Janta Congress (Punjab), Jana Congress (Madhya Pradesh) and Kerala Congress (Kerala).²⁵

However, one noticeable characteristic of the defections was that these were confined to the state governments only and they did not affect the government at the Centre. Among states also, there were some states which were more or less free from defections, in this category are listed the states of Kerala, Tamil Nadu, Maharashtra, Nagaland, Jammu and Kashmir and Orissa. North Indian States offered the breeding ground for the evil of defections and in the first 10 months after fourth elections, defection totalled 175 of which 133 occurred in the States of Haryana,

24. B.L. Fadia, n.14, pp.395-96

25. Inderjit Gill, n.1, p. 201.

Madhya Pradesh, Bihar and Uttar Pradesh alone. Besides these, West Bengal, Tripura and Pondicherry also did not remain unaffected.²⁶

IV

In view of the events of the post-Fourth General Elections, 1967, in which the political defections assumed very serious proportions, menacing to our Parliamentary institution, a resolution was adopted at the Whip Conference held at Simla in 1967, holding the opinion that the frequent floor crossing was 'morally incorrect' and defecting members should seek re-election after resigning their seats. It urged upon all political parties to evolve "a code of conduct which should be mutually acceptable and morally binding". Therefore, on 11 August 1967, a prominent Congress Member of Lok Sabha, P. Venkatsubbaih, moved a non-official resolution seeking the appointment of a committee on defections. The resolution was passed by the House, with Y.B. Chavan as the Chairman of the Committee and including other prominent members as P. Govinda Menon, Ram Subhag Singh,

26. Ibid.

Madhu Limaye, S.N. Dwivedi, N.G. Ranga, Bhupesh Gupta, C.K. Dapthary, M.C. Setalvad, H.N. Kunzru, J.P. Narayan, etc. The Committee was known as the 'Chavan Committee'. Its recommendations were as follows:²⁷

- 1) Political defectors should be debarred from occupying any office, such as Minister, Speaker, Deputy Speaker or Chairman of any statutory corporations for a period of one year from the date of defection.
- 2) The size of a Ministry in a State should be 10% of the strength of the Assembly where there was bicameral legislature and 11% where there was unicameral legislature.
- 3) Defectors should be barred from becoming Ministers upto one year from the date of defection unless they got re-elected after resigning.
- 4) The Chief Minister should be competent to seek dissolution of the House, even of reduced minority, after his party is reduced to minority on account of political defections.
- 5) The electorate should be educated and made to realise the problems created by independent legislators, so that they do not return them.

27. The Times of India, February 19, 1969.

- 6) No one who belonged to the Upper House should be elected either as Prime Minister or Chief Minister of a State. If necessary, the Constitution should be amended accordingly.
- 7) Every elected legislator should bind himself in the party discipline and should not violate that.
- 8) 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.

Though the Committee made a bold attempt to define defection, yet it was by no means a perfect definition. It had not covered independent members of the legislative bodies, who have been made free to defect in the way they liked and thus create instability. According to the Committee's definition, a legislator is not supposed to have defected, if he has been expelled by the party. Thus, any one can create a situation in the party by which his party is forced to expel him from the party. This will enable him to defect without a defection label.

THE CONSTITUTION (32ND AMENDMENT) BILL 1973:

In 1973, the Congress government brought forward the Constitution (Thirty Second Amendment) Bill to provide

against defections. Under this, a member incurred disqualification if he voluntarily gave up membership of the political party by which he was set up or if he voted, or abstained from voting, in the House contrary to any direction issued by his political party, without its prior permission. Exemption was, however, made in the case of split in the political party. The Bill went to a Joint Committee of Parliament, but ultimately lapsed with the dissolution of the House.

THE CONSTITUTION (48TH AMENDMENT) BILL 1978:

A bill to the same effect was introduced in the Parliament by Janata Government in August 1978. But the government again failed to bring necessary consensus among the opposition members and also strikingly, the Janata Government initiated the immoral Act of Defection in the Rajya Sabha. A section of the ruling party itself started opposing the move and subsequently, the Bill failed to become a law. Prof. Madhu Limaye, himself a member of the ruling party, termed the Bill as violative of the Fundamental Rights. The Bill was subsequently withdrawn.

THE JAMMU & KASHMIR ACT:

In September 1979, the State of Jammu & Kashmir took the initiative and amended the Jammu & Kashmir Representation of the People Act, by enacting an Anti-Defection Law. It contained almost the same provisions as proposed by the 32nd Amendment Act of 1973, initiated by the then Congress Government. The Law subsequently came into effect from October 1979.

However, in substance, a look at the statistical data of political defection covering the period of 1967-84 shows that this political crime as a new phenomenon assumed a foundable shape, challenging the very existence of our Constitution. Various suggestions, proposals and remedies had been offered to prevent this crime including a system of recall, substitution of Parliamentary System by the Presidential Form of Government and the partyless model of democracy etc., but they all were in vain owing to the vested interests of the party in power. It was only the Rajiv Gandhi Government which took the concrete step to clean the public platform already corrupted with such heinous practices as defection by enacting the Anti-Defection Law, promulgated after the thumping victory within the House. The Law in effect sought to check the malaise

from further spread, which would be subsequently discussed in next chapter with comprehensive analysis of the subject.

In the next chapter, we have analysed in depth the enactment of Anti-Defection Act by Rajiv Gandhi Government. This Act is very important because it effected 'an Amendment in the Constitution'. In our analysis, we have been able to prove that the Act has many loopholes and failed to check the defection politics in India.

CHAPTER III

ANTI-DEFECTION LAW OF THE CONSTITUTION: THE TENTH SCHEDULE

Till the early of 1978, nothing could happen in the direction of curbing the menace except committees (appointed on this matter) and intellectual debates in the Ivory-Towers of universities and seminar rooms. Only in February 1978, a bill for passing an Anti-Defection Law was introduced in the Parliament during Janata Party's rule. But for one or other reasons, it could not be passed. It was Rajiv Gandhi's Government which showed an unananticipated interest in the matter after the end of so-called 'Indira regime', and having swept over a two-third majority in the Eighth General Elections on the pretext of the so-called 'sympathy wave' and the projected image of Mr Rajiv Gandhi as 'Mr Clean'. Some scholars of Indian politics have brilliantly put a point of deep investigation that why the ruling party (Cong-I) even after having a two-thirds comfortable majority in the House attached so much importance to the Anti-Defection Law, when neither it was committed to it in its election manifesto nor the party was under

threat of losing power owing to defection and that too in a hasty manner without proper debate and discussion over such a debatable point.¹

II

The major contribution of Rajiv Gandhi Government was Anti-Defection Act, 1985 which also came to be known as 52nd Amendment Act, 1985. This Act became operative from March 1, 1985. The Act broadly designed to prevent the scourge of defection of members of Parliament and State Legislatures from one political party to another and destabilising government in the process. This Act has added a new Tenth Schedule to the Constitution which, inter alia, provides for the following:

- 1) A member of Parliament or State Legislature belonging to any political party shall be disqualified for being a member of that house, if

1. A.K. Verma, and B. N. Verma, The Bullet and the Ballots (Bareilly: Samuchit Prakashan, 1986) p. 158.

- a) he has voluntarily given up his membership of such political parties, or
 - b) he votes or abstains from voting in such house contrary to any direction issued by the political party to which he belongs.
- 2) An elected member of the House who has been elected as such, otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House.
 - 3) A nominated member of a House shall be qualified for being a member of the House if he joins any political party after the expiry of the 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.

Disqualification on the ground of defection not to apply in case of "split".

Where a member of the House makes a claim that he and any other of his legislative party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than 1/3rd of the members of such legislative party.

- A) He shall not be disqualified on the ground:
- i. that he has voluntarily given up his membership of his original political party, or,
 - ii. that he has voted or abstained from voting in the House contrary to any directions issued by Party or by any person or authority or such voting or abstention has not been condoned by such party, person or authority without 15 days from the date of such voting or abstention, and,
- B) From the time of such split, such faction shall be deemed to be the political party to which he belongs, disqualification on the ground of defection not to apply in case of a merger:
- 1) A member of a House shall not be disqualified where his original political party merges with another political party and he claims that he and any other members of the original political party -
 - a) have become members of such other political party or as the case may be, of a new political party formed by such a merger, or,
 - b) have not accepted the merger and opted to function as such as a separate group, and from the time of such a merger, such other political party or new political party or group as the case may be, shall be deemed to be the political party to which he belongs.

- 2) The merger of the political party of a member of a House shall be deemed to have taken place if, and only if, not less than 2/3rd of the members of the legislative party concerned have agreed to such a merger.

EXEMPTION:

A person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or Deputy Chairman of the Legislative Council of the States or the Speaker or the Deputy Speaker of the Legislative Assembly of the State, shall not be disqualified under the Act.

- a) If he, by any reason of his election of such office, voluntarily gives up the membership of the political party to which he belonged immediately before such an election and does not so long as he continues to hold office thereafter, rejoins that political party, or,
- b) If he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold office.

**DECISION ON QUESTION AS TO DISQUALIFICATION
ON GROUNDS OF DEFECTION**

- 1) If any question arises as to whether a member of a House has become subject to disqualification under provisions of the Act, the question shall be referred for the decision of the Chairman or the Speaker, whose decision shall be final, provided that where the question which has arisen is as to whether the Chairman or the Speaker of such House has become subject to such disqualification, the question shall be referred for the decision of such members or the House as the House may elect in this behalf and his decision shall be final.
- 2) All proceedings in relation to any question as to disqualification of a member of a House shall be deemed to be proceedings in the Parliament within the meaning of Article 122 or as the case may be, proceedings in the legislature of a State within the meaning of Article 212.

BAN ON JURISDICTION OF COURTS:

Notwithstanding anything in the Constitution, no court shall have any jurisdiction in respect of any matter

connected with the disqualification of a member of a House under the Act.

RULES:

The Chairman or the Speaker of the House may make rules for giving effect to the provisions of this Schedule and he may provides

- (i) for the maintenance of records as to the political parties, if any, to which different members of the house belong.
- (ii) the report which the leader of a legislative party in relation to a member of a House shall furnish with regard to any condonation, the time limit within which and the authority to whom such reports shall be furnished.
- (iii) the report which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished.
- (iv) the procedure for deciding any question referred to in sub-para(1) of Para 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

The Anti-Defection Act is undoubtedly the most momentous constitutional enactment since the Constitution itself was framed 44 years ago. But, it is arguable that the Act is more important because of the way in which it was enacted and for what it seeks to do. Opinions vary on the propriety of the Act. Subhash Kashyap, speaking at the National Seminar on "The need to reform the Tenth Schedule", argues that, "the manner in which Rajiv Gandhi brought about this Act, shows a deliberate and sustained desire on his part to minimise political conflict and to widen areas of common, and therefore national, consensus".² But having said this, it is necessary to point out, firstly, that the Act itself has achieved less than it seeks to do and secondly, "that it has launched Indian democracy into hitherto uncharted waters".³

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2. Subhash C. Kashyap, National Seminar "The Need to Reform the Tenth Schedule", August 28-29, 1992.
 3. Prem Shankar Jha, The Anti-Defection Bill, "Entering Uncharted Waters", The Times of India, February 4, 1985.

III

Ever since the enactment of Anti-Defection Law, serious criticisms and reservation have been made against its operationability and some well known scholars and experts have even questioned the very motive of bringing the Act by the ruling party. A basic objection to the measure has been on the grounds of constitutional propriety. Defection, it has been argued, is essentially a question of political morality for which cure is not to be sought by the enactment of a law banning it. A true remedy would be for political parties to develop conventions which deny rewards and respectability to defectors. Phul Chand and S. Rangaswami are of the opinion that any law which provides for the disqualification for voting or abstention from voting in the House contrary to the direction of his political party, without prior permission from the party, violates the freedom of conscience of legislators. Its violative of their rights to freedom of speech, expression and association guaranteed under Articles 19, 105 and 194. It has also been argued that a vote in favour of a measure, which in particular

cases may be in breach of the party manifesto on which the election was won, may even mean the violation of the members' oath to bear true faith and allegiance to the Constitution. A fundamental question is asked as to whom a member is primarily responsible - to the electorate or his party bosses? In a parliamentary democracy, it is argued, the political situation cannot be frozen. Democratic parties cannot be built by legislation but only on the basis of certain commitment to ideology, principles and tolerance for dissent.⁴

The violations of fundamental principles enshrined in our Constitution is sheer mockery of the constitution in the sense that what is allowed to the common citizens outside, is not allowed to their representatives - leaders or saviours inside the House. This is all due to the fact that the members/representatives have shown their allegiance or loyalty to the party in being elected. Once they are elected on the party's behalf (full electoral term), they are forever alienated from their own individual conscience, decisions, views, expression of their own ideas, etc. inside

4. Phul Chand & S. Rangaswami, "The Anti-Defection Law: the Constitution (52nd Amendment) Act", 1985, The Journal for Constitutional and Parliamentary Studies, 21(1-2), 1987, p.117.

the House and are put under complete subjugation of the party concerned. To this concern, the noted jurist of India, Mr N.A. Palkhiwala, seems to be very caustic. He comments:

"No great insult can be imagined to members of Parliament and State Legislators than to tell them that once they become members of a political party, apart from any question of the party constitution and any disciplinary action the party may choose to take, the Constitution of India itself expects them to have no right to form judgement and no liberty to think for themselves, but they must become soulless and conscienceless entities who would be driven by their political party in whichever direction the party choose to push them".⁵

The right to dissent is no doubt a valuable right, but it is forcefully contended, "if the right is used to make a democratic government impossible, feeble or ineffective, then the exercise of the right is an attack on democracy, which democracy must defeat for its own survival. Hence, it is said, the need for a rule - it may even be a simple rule

5. Nani A.Palkhiwala, Nani A., Quoted in AIR, 1987, Punjab and Haryana 263.

doing rough justice - if defections are to be halted. If in the process, some suffer, it has to be remembered, in every crusade, there is bound to be some martyrs.⁶ The sheer ban on the dissenting vote cannot check the malady from its spread. Dissenting vote is rather a thing to be encouraged, than to be penalised by unseating the dissenter, especially in context with 2/3rd majority of the Congress(I). Elected members should not be considered as renegate if given an independent vote. Madhu Limaye contends that -

"Democracy rests on 'Dissent' and condemns the clause of unseating members for non-compliance with a party whip as we have been a nation of sycophants and mental slaves. it would lead to the establishment of 'Party Tyranny' and mar the functioning of democracy".⁷

On the procedural ground, Prof. Madhu Limaye termed the Anti-Defection Law as 'sinister in character' under the garb of the 'utmost radical significance' for cleansing the Indian polity.⁸ According to him, the press and intelligentsia were not given any time to consider the pros

6. Phul Chand and S. Rangaswami, n.4, p.123,

7. Madhu Limaye, "Democracy Rests on Dissent", The Times of India, 6 March, 1985.

8. Madhu Limay, "Law Against Defection: Several Serious Flaws", The Times of India, 13 March, 1985.

and cons of the proposed Bill which was pushed through the two Houses of the Parliament within a week after publication in disregard of the prescribed procedure for examining important legislation. The so-called Anti-Defection Constitution Amendment Bill was introduced in the Lok Sabha on January 24, 1985 and all its three readings were completed in a day on January 30. The Bill so passed was again rushed through the Rajya Sabha and it became a Law. On 31 January 1985, Rajiv Gandhi could boastfully claim to check the malady within 20 days, which could not be prevented in the last 20 years, but the press and the intelligentsia should have been given ample time in the wake of the rout of the opposition parties.

V.S. Rama Devi opines that "Paragraph 3 of the Tenth Schedule of the Constitution provides for exemption from disqualification on the grounds of defection in case of a split in a political party. Under this paragraph, a split can be established on two facts - one is that a member should claim that there is a split in his original political party, that is to say that the party which had put him up as a candidate; and the second is that as a result of such split, not less than one-third of the members of the legislative party represent the faction which had arisen because of the split. If these two requirements are

fulfilled, the Speaker or the Chairman will have to allow them to sit as a separate faction and cannot disqualify them on the grounds of defection

As a matter of fact, the Tenth Schedule does not provide for any definition of split and does not enumerate the manner in which a split should take place, that is to say, whether there should be a split in the total membership of the organization or legislative party or any other organ of the party. From this, it can be deduced without any doubt that the Speaker or as the case may be, the Chairman will have to allow as and when a member claims that he and other members (not less than one-third of the legislative party) constitute a separate group as a result of a split in the original political party within the legislature. This was the accepted interpretation throughout the debate in the House when the Bill was discussed and on no occasion any member raised any objection to such an interpretation. As a matter of fact, when the Bill was before the Parliament, various amendments were moved to this paragraph for the purpose of altering the faction of the members of the legislative party and ultimately the faction

of one-third of the legislative party was specified after consultation with the opposition.⁹

OTHER INCONSISTENCIES:

(A) There is another issue which is being raised to certain quarters, that is, the issue of membership as to at what point of time after election an elected candidate becomes a member of Parliament, or as the case may be, a State Legislature. All along the interpretation of the law has been that a candidate becomes a member, the moment he is declared by the returning officer as elected.

The declaration is reproduced verbatim in the Gazette and contains the date on which it has actually been made by the returning officer. The date of notification in the Gezette is, therefore, not material and there appears to be no real justification for regarding the latter date as the date on which an elected candidate becomes a member of a particular House.

But in subsequent interpretation it is put forward to the effect, that an elected candidate becomes a member

9. V.S. Rama Devi, in S.C. Kashyap (ed) Reforming the Constitution, New Delhi, 1994, pp.303-4.

neither on the declaration of his election by the returning officer nor on the publication of such result in the official Gazette, but only on the notification issued under Section 73, i.e., on and from the date of notification for the constitution of the House is issued. As a matter of fact, Section 73, as originally worded, provided that such a notification would be issued by the appropriate authority itself declaring the names of the members and such a declaration was only additional to the declaration under Section 66. Later on, it was felt that the Election Commissioner could issue such a notification which was in the nature of publishing of the declaration made from time to time in one consolidated form for the purpose of convenience of one and all, and to show that the elections had been completed and the President could summon the House. That did not mean that the elected candidate becomes a member only from the date of such a notification. Section 73 did not overrule Section 67-A.

However, in view of the new interpretation being put forward, it would be better to incorporate a clause in the Tenth Schedule to remove any doubts to the effect that an elected candidate shall be deemed to have always been a member from the date he is declared elected by the returning officer. Otherwise, there is a possibility of the entire

Tenth Schedule becoming a mockery. If the new interpretation gains ground, an elected candidate can, with impunity, change the party (to his benefit) in the interregnum between the date of the declaration of his election results by the returning officer and the date on which the due constitution notification is issued, since during the period, he shall not be a member but only an elected candidate. There will always be a gap of few days between the declaration of the election results by the returning officer and the issue of due constitution notification.¹⁰

(B) Another issue which requires serious attention is whether the disqualification on the grounds of defection will disqualify the concerned members to be appointed as ministers or to continue as minister. This issue is causing a lot of embarrassment. Apart from that, it involves certain fundamental questions. At present, a person after being disqualified as a member is treated as qualified to be appointed as minister or continue to be a minister under Clause (5) of Article 75 of the Constitution as it allows a person to be a minister for a period of six consecutive months even if he is not a member of either House of

10. Ibid.

Parliament. Similarly, a disqualified member can be a minister or continue to be a minister in a State Cabinet under a similar provision, that is to say, Clause (4) of Article 164. When these two provisions were incorporated, the idea of disqualification on the ground of defection was not in the picture at all. Further, the very expression "Political Party", did not find place in the Constitution till the Tenth Schedule was added. Now the moot point is whether such a disqualified member should be allowed to continue or become a minister on mere technical interpretation or should he be debarred from ministership in keeping with the spirit of the Tenth Schedule.¹¹

(C) Yet another provision that a member expelled by his party for his activities inside the House would be automatically disqualified from the membership of the House seems to be a negation of the party system. It suggests in effect that the party bosses would appropriate themselves through this dubious constitutional amendment - the power to expel a member from the House - a power that was never theirs nor ever envisaged to be theirs. Prior to the passing of this Act, it was only the House that could have expelled its members if a majority of its members felt that

11. Ibid.

he should go. But now, this power has also been given although somewhat indirectly to the party leaders leading to the establishment of the 'Party Tyranny' in our Federo-Parliament System.

(D) The provision under Clause (b) of Sub-para (1) of Para 2 of the Tenth Schedule lacks with prescription of a 'time-limit' provision for making approach to the sole and ultimate judicial (in fact, quasi-judicial) authority, i.e., Presiding Officer of the concerned House by the party whose members (voting or abstaining against the directives of the party in the House) are liable to disqualification and the party is supposed to make a claim to this effect. Indeed, 15 days condonation time period has nothing to do with it. The requirement of the above-mentioned 'time-limit' provision to be included in Para 2 of the Tenth Schedule, has got an important implication.

A party expected to make claim (after the lapse of 15 days condonation period in maximum) for disqualification of its members under the purview of Para 2 may delay for indefinite period in making such claim to the Presiding Officer of the House. This unlimited time gap may be utilized to manipulate or persuade the members liable to be disqualified by the party to make them stay back in the party. Such an effort on the part of the party will be

unconstitutional in the sense that such members shall be liable to disqualification from the date on which they have voted or abstained from voting against the party directives or hardly from the date on which the 15 days condonation period ends. Also, such persuasion and manipulation can be made in lieu of money and other kinds of incentives encouraging corrupt practices in the business of parliamentary democracy.

Similarly, the provisions under Para 6 of the Tenth Schedule lacks with the prescriptions of a 'time-limit' provision for Presiding Officers (Speaker/Chairman) of the House(s) with reference to arriving at certain decision in the matter of disqualification. This lacuna may further some kind of malpractices, i.e., (i) no time-limit situation may encourage bargaining and manipulation of judicial position of the Presiding Officers by power-hungry politicians in the House; (ii) a hostile Presiding Officer of a House may misuse unlimited time-period on his part in hampering the interests of a party whose case is under consideration; and also he may intentionally or unintentionally benefit the interests of

another party. This happened in Bihar in a similar case.¹² However, so far every single case of alleged defection has been referred by the Speaker of Lok Sabha to the Committee of Privileges for inquiry, and the process has often taken very long.¹³ Thus, defection has no immediate effect.

(E) The enactment of the Tenth Schedule also appears to have taken into consideration only the big states (like Uttar Pradesh, Bihar, Madhya Pradesh and others), where two or more political parties do not fight neck-to-neck to have majority to form Government. But the case of smaller legislatures like that of Goa, Pondicherry and several North-Eastern States, such as Manipur, Nagaland, Tripura, etc. are quite different. There, with smaller number of

12. See, The Times of India, Delhi, April 21, 1991. On November 22, 1990, 13 BJP Legislators in the Bihar Assembly formed a dissident group and submitted a petition to the Speaker demanding allotment of separate seats as a separate group in the House. Significantly, with the help of this errant group of the 13, the then Bihar Government under the leadership of Mr Laloo Prasad Yadav could be saved, but the constitutional position of this group remained vague and unclear in the House as the decision regarding the claim of this group in its petition to the Speaker loomed for a long period and could be decided on (or about) April 18, 1991, only after 5 months. Ironically, the case could be decided just (3-4) days before, when one of the factions of the same group (of 13) had declared to rejoin the Original Party (BJP) fold.

13. Rule 7 of "The Member of Lok Sabha: Disqualification on the Ground of Defection Rules, 1985",

seats in representative Houses, the assemblies, party positions are many times quite balanced as the parties in government is ahead of its rival parties in the Houses by a few seats and sometimes even by just one or two. In these smaller legislatures, there are some miniscule parties commanding very small numbers (suppose 2 to 6) furthering possibilities of split (vide Para 3 of the Tenth Schedule) even if one or two members leave the party. Such one or two members sometimes make a great difference by joining a party which just behind the majority party in the run of political power. This all may be done in return for some pecuniary benefits or ministerial berth without coming into the purview of any disqualification on grounds of defection. In such a situation, the ambitious Tenth Schedule proves self-defeating.

(F) The doubt is often raised when the whole of the Law is likely to be overlooked at the face of the dissolution of the House in the near future. It is quite clear from a statement made by an MLA of a State belonging to a Janata Dal (Samajwadi) Party. He is reported to have said, "We will defy the whip and

vote against our group. What is the fear of Anti-Defection Law when elections are ahead of us".¹⁴

(G) The provisions under Para 6 of the Tenth Schedule have elevated the position of the Presiding Officer (Speaker and Chairman) of the Houses to quasi-judicial status besides the same in the matter of impeachment. There are some inherent deficiencies in such an unjudicious effort made through the above said provision:

- (1) Authorities of judicial and quasi-judicial types are technical with some kind of legal expertise. But, Presiding Officers of the Houses are not necessarily legal experts; and mostly they are political experts. To expect justice in the real sense of the term from such unskilled persons is futile.
- (2) An authority of this kind must go to non-partisanmen in the best interests of the justice itself. But contrary to this fundamental requirement, the position of Speaker and Chairman should be impartial. Moreover, they cannot be men with non-partisan views as they are generally nonetheless hard core politicians belonging to certain political parties (before their election

14. The Times of India, March 29, 1991.

commonly elected with the support or other political parties). Although, in principle, they are expected to maintain impartiality in the Houses after being elected, but in view of the realities of the situation and human nature, they cannot/should not be supposed to be so as, they are mostly leading party-men supporting particular kind of ideology, policies, programmes, etc., and attaching all their sympathies to the concerned parties. It is obvious in the honest acceptance of Mr V. Radhakrishnan, the Speaker of Kerala Assembly. He said, "The Speaker is elected on a party ticket and he will definitely need a political party to see him throw in the election the next time". He further adds, "There is no point in accusing the Speaker of being vindictive after having entrusted him with powers to disqualify a legislator".¹⁵

- (H) There is no clear cut provision as to whom the responsibility shall go to initiate the point of disqualification against defection. Though, party whip has been made responsible for moving petitions against its own members in this regard, but even then it is not clear as to who shall initiate the matter of

15. Times of India, Delhi, January 16, 1990.

disqualification related to other members of the House including Speaker or Chairman who shall be no more than a party man after his election for this post in the House. It is also not clear if other members of the House can also initiate defection proceedings against such members whom the concerned parties keep quiet on their own part.

Ever since the Act has been passed, though legislative recognition of the political menace threatening Indian democracy and its attempt to find a legislative solution has been lauded, questions have been raised as to whether the Act could be a 'constitutionally valid and practically viable document' to solve the problem. Litigations cropped up all over India and ultimately the apex Court sat in judgement of the constitutionality of the Act and upheld it by a majority of 3:2 in Shri KIHOTE HOLLOHAN v/s Shri Z.A.C. HILLU and others, JT 1992 (1) SC 600. The tenor of the majority of judgement, however, does not hold as absolutely baseless the petitioners contention that the provisions of the Tenth Schedule "...negates those very foundational assumptions of parliamentary democracy; of freedom of speech; of the right to dissent and of the

freedom of conscience",¹⁶ but concedes that all the "areas of experimental legislation" has some "plus and minus points."¹⁷ Considering the crux of the issue to be that, "... whether under the Indian constitutional correctives against a legislatively perceived political evil of unprincipled defections induced by the lure of office and monetary inducements"?¹⁸ The majority held that,

"The argument that the constitutional remedies against the immorality and unprincipled chameleon - like changes of political hues in pursuit of power and self-suffer from something violative of some basic features of the Constitution perhaps ignores the essential organic and evolutionary character of a Constitution and its flexibility as a living entity to provide for the demands and compulsion of the changing times and needs. The people of this country were not beguiled into believing that the menace of unethical and unprincipled change of political affiliation is something which the law is helpless against and is to be endured as a necessary concomitant of freedom of conscience. The onslaught on their sensibilities by the incessant

16. JT 1992 (I) SC 600, p.612.

17. Ibid, p. 614.

18. Ibid, p. 613.

unethical political defections did not dull their perception of this phenomenon as a cancer, eating into the vitals of those values that make democracy a living and worthwhile faith. This is pre-eminently an area where judges should defer to legislative perception of a reaction to the pervasive dangers of unprincipled defections to protect the community".¹⁹

IV

In view of preventing the situation arising out of instability of governments and corruption due to political defections either some kind of alternative arrangement or curative prescription as to curb the defects and lacuna in the provisions of Anti-Defection Law under the Tenth Schedule is required.

Many a times the decisions of the Presiding Officers were challenged and the constitutionality of the Tenth Schedule, questioned in different High Courts. What queered the pitch, however, was the judgement of the five member

19. Ibid, p. 615.

Constitution Bench of the Supreme Court which declared Para 7 of the Tenth Schedule that gave finality to the decisions of the Presiding Officers in the matter of disqualification of members on the grounds of defection in as much as it barred completely the jurisdiction of the Courts. The Supreme Court judgement 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. This made all the Presiding Officers of Legislatures sit up and make common cause. On the other hand, to others the blatantly partisan exercise of power and misuse of authority under the Anti-Defection law by some of the Speakers made the Supreme Court judgement seem unexceptionable and necessary.²⁰

At a meeting of some of the concerned Ministers and Leaders of Opposition Parties in Parliament convened by the Speaker on February 5, 1992, all were agreed on the need of avoiding a confrontation with the judiciary in the implementation of the Anti-Defection Law. Again, at the specially convened Presiding Officers Conference on February 11, 1992, the piquant situation arising out

20. S.C.Kashyap, 'National Seminar' on Constitutional Reform, Need to Reform the 10th Schedule, August 28-29, 1992.

of the Supreme Court judgement was considered. While there were difference of opinion in a few areas, some suggestions were thrown up for amending the Anti-Defection Law. The Conference also discussed the matter and underlined the need for reforming the Anti-Defection Law, to plug loopholes and remove the lacunae.²¹

To overcome these lacunae, eminent scholars have provided for certain common suggestions which would be of lasting importance if the law has to survive in true spirit of curing the disease from our polity. These proposals are:

- 1) Several terms like 'political parties', 'split', 'merger' etc., have not been defined and many of the problems have been caused by this ambiguity. Almost unanimously, every scholar has viewed it to be defined clearly to avoid confusion.
- 2) The Tenth Schedule defined a 'Legislative Party' and an 'Original Political Party' but unfortunately a 'Political Party' has not been defined. It would be necessary to define a Political Party and to lay down conditions for its recognition for the purpose of Anti-Defection Law. It is particularly imperative in view of

21. S.C. Kashyap, Anti-Defection Law & Parliamentary Privileges, N.H. Tripathi Pvt Ltd, Bombay, 1993.

the Constitutional Provision of Para 3 of the Tenth Schedule, in the effect that the breaking away faction following a split would be deemed to be a 'Political Party' for purpose of Para 2(1).

- 3) In matter of disqualification of elected members on grounds of defection (vide Clause (b) of Sub-Para 2) authority regarding decisions has been given to the Presiding Officers of the concerned House (vide Para 6 of the Tenth Schedule). It is better to have a Provision added to the Anti-Defection Law that in case of defection by an individual member (Para 2), the ultimate authority regarding decision should go to the party or party authorities for the reason that the member was, in fact, appointed or nominated for elections by the party and elected on behalf of the party.

But, in case of a split and merger, the Presiding Officers' position should remain as it is in Para 6 of the Tenth Schedule. And also the Presiding Officers' decision on other matter of disqualification, should be done away either with the Constitution of an independent authority to decide the case of disqualification, so that the Presiding Officer remains

free from political controversy and its pristine honour and glory are resorted.²²

4) If defection is deemed to be an offence or a crime, distinction between individual and group defection must be done away with. After all, notwithstanding the Supreme Court decision on the point, an act by an individual on his own cannot be deemed to be a crime if the same act committed by a group of people - one-third of party membership - after entering into a conspiracy to act together to defeat the objective of the law and through out a legally constituted government to take its place, is to be deemed entirely legal, legitimate and acceptable under the system. If we are sincere about outlawing defections, anyone voluntarily changing his party affiliation after being elected on a particular party ticket must automatically and immediately loose his seat in the legislature. There should be no exceptions and no provisions.²³

(5) The provision under Para 5 of the Tenth Schedule should be added with another paragraph having mention of a provision: if a Speaker or Chairman of a House does not

22. Ibid.

23. Ibid.

rejoin (after giving up the post) the original political party to which he belonged immediately after his election as Speaker or Chairman, and becomes a member of another party, he must not hold any lucrative post including ministerial berths for rest of his tenure as a member of the House. In violation of so, his membership should be forfeited. This is useful in preventing the acts of destabilising the popularly elected government in a situation when joining hands with the rival party by the Speaker of the House may sufficiently hamper the cause of the party in government.²⁴

- (6) The term 'expulsion' and 'unattached' do not figure in the Anti-Defection Law. It was being repeatedly stressed by unbiased scholars that the law needed to be amended to prevent the party leaders from resorting to the device of 'expulsion' and the Presiding Officers from rushing to declare some members under its clutches. A member in present state if cannot resign voluntarily, the party should also not expel him even

24. Goa Case (1989), when MGP Government was toppled by the then Speaker Ravi Naik (also from MGP) alongwith 7 other MGP MLAs, thus, defeating the purpose of Anti-Defection Law.

under the party constitution or if at all that happens, it cannot be applied for the defection under the Tenth Schedule. 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 its judgement, but it will still be desirable to lay it down in the Law clearly.

- (7) Also, it should be categorically provided that a defector whether single or a member of a big or small group - not only instantaneously and automatically loses his membership of the House, but he cannot also be appointed as a Minister or to any public office of material benefit or influence without seeking fresh elections. The Presiding Officers also deserve kudos for taking the courage to say that the members changing their parties may not be given political position. This becomes all the more courageous in the context of sometimes the entire Council of Ministers and the

Speaker himself being from among the defectors, in the absence of any law preventing this.²⁵

- (8) The provision under Para 2, 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, which ultimately defeats the purpose of checking defection. It is, therefore, necessary that the Rules are brought unto greater conformity with the aims and objects of the Tenth Schedule.
- (9) Among other suggestions, it would be worth reforming the whole electoral process, which hence forth dilates the democratic principles, eg., the by-election and the vacancy of a seat in the constituency for relatively longer period also impinges upon the members to switch over their loyalty from time to time. Any

25. Ibid.

disqualification and subsequent vacancy of seat should be filled in a 'time-bound' schedule so that the faith in representative democracy may be restored. The nature of political party especially the National Parties should be well-defined and registered with the Election Commission so as to avoid constant fragmentation at the national and regional level. Thus, to ascertain decentralization and internal democracy within the structural fold of political parties, a particular qualification standard should be fixed and autonomy within the party should be left to decide about the matters of 'dissent' and 'disaffection'. The ever ongoing heavy expenditure on the elections have to be checked and minimized²⁶ so that the corruption could be checked at the initial stage only.

Thus, in the ultimate analysis, any legislative or constitutional measure is likely to be of limited use unless the people in general are vigilant to their elected representatives' behaviour. The working experience of the Constitution in the post-Nehru era has truly brought to the fore, with striking clarity, the fact as to how illogical it

26. P.M. Kamath, "Federal Funds for United States of America's Presidential Poll", Financial Express, December 13, 1980.

is to expect Westminster model parliamentarianism to provide both a 'stable' and 'responsible' government. While the inherent paradoxes in the working of the Westminster model based on "interaction by integration" are also experienced in United Kingdom, the multiple party structure in India has further precipitated the problem. The malaise of defection which had been sought to be cured through the Anti-Defection Law has further complicated the issue. The judiciary also taking a note of the situation has upheld the law but the dispassionate analysis of the Act shows that instead of striking at the root of problems, it has become more crippled to provide for such immoral practices. Moreover, at this stage, it is agreed on all sides that the Tenth Schedule of the Constitution which embodies Anti-Defection Law has serious lacunae which have caused tremendous damage to our body politic and that amendments are called for urgently. We have, however, developed a strange penchant for the politics of timing.²⁷ Each leader tries to wait for the most opportune moment when to do the right thing would be of the maximum political benefit to him or to his party until in the process of this waiting,

27. S.C. Kashyap, "The Anti-Defection Law and the Parliamentary Privileges", N.M. Tripathi Pvt Ltd., Bombay, 1993.

situation gets explosive, out of hand and beyond management. Delay in bringing forward a comprehensive amendment only increases doubts about the bona fides of the government's intentions. What is needed urgently is a comprehensive amendment of the Tenth Schedule of the Constitution. This should be introduced at the earliest and circulated for eliciting public opinion to save the democratic principles from going to disarray.

CHAPTER IV

ISSUE OF FUNDAMENTAL RIGHTS AND PARLIAMENTARY PRIVILEGES OF MEMBERS

Any issue concerning privileges of Parliament and the State Legislature in India must begin with reference to Article 105 (and the corresponding provision for the State Legislatures, Article 194) of the Constitution. But before examining the nature of the privileges, it should be well established as to what these privileges necessarily mean.

'Privilege' means a special or exceptional right or freedom or an immunity enjoyed by a particular class of persons or some individuals. In its legal sense, it means an exemption from some duty, burden, attendance or liability to which others are subject. Privilege can also be defined as a right which others do not have. In the same way Parliamentary privileges are those special rights belonging to each House of Parliament, its members and committees, without which they can not perform their functions in the manner they are expected to. The privileges are granted with a view to maintaining the interdependence of action and the dignity of the position of the House of the Parliament, their committees and the members and to enable them to

function without any let or hinderance.¹ These privileges, in practice, give rise to certain powers, immunities and exemptions. It does not, however, imply that the privileges belonging to members place them on different footing than that of an ordinary citizen in the eyes of law, unless there are good reasons in the interests of Parliament itself to do so. The basic law is that all citizens including members of Parliament/State Legislatures should be treated equally before the law. They have the same rights and liberties as ordinary citizens except when they perform their duties in Parliament. The privileges are available to the members only when and to the extent that they are functioning as representatives of the people in Parliament and discharging their Parliamentary responsibilities. The privileges do not, in any way, exempt the member from their normal obligations to society which apply to them as much and perhaps more closely in that capacity, as they apply to others.²

1. Subhash C. Kashyap, Our Constitution: An Introduction to India's Constitution and Constitutional Law, NBT, 1994, pp. 167-68.

2. Ibid.

PRIVILEGE OF FREEDOM OF SPEECH AND VOTE:

The founding fathers of Indian Constitution, in their wisdom attached utmost importance to the two privileges which they deemed essential for the successful working of the parliamentary democracy. They attached these privileges of freedom of speech in Parliament and immunity of members from any proceedings in courts in respect of anything said or any vote given by them in Parliament, are specified in Article 105 of the Constitution which provides for the following:

- 1) Subject to the provisions of the Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.
- 2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, papers, votes or proceedings.

- 3) In other respects, the powers, privileges and immunities of each House of Parliament and of members and the committees of each House shall be such as may from time to time be defined by the Parliament by law, and until so defined, shall be those of that House and of its members and committees immediately before the coming into force of Section 15 of the Constitution (44th Amendment Act, 1978).
- 4) The provisions of Clause (1), (2) and (3) shall apply in relation to persons who by virtue of the constitution have the right to speak in and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to members of Parliament.³

However, for every speech and action henceforth taken in Parliament, a member is only subject to the provisions of the Constitution and the Rules and discipline of the House. Absolute privilege has been given to him in respect of anything said or any vote given in Parliament or a committee thereof. The provision then entailed that a member may speak

3. The Constitution of India.

or vote without any fear or favour or apprehension of adverse consequences of any kind for speaking out their minds and expressing their views and voting as they liked. But these sound principles were put to test in 1973, when the Lok Sabha Speaker, Dr G.S. Dhillon, while disallowing a question of privilege regarding an alleged directive by a parliamentary party to its member not to hob-nob with the members of other parties, made inter-alia the following observations:

.. They have right to discuss everything in their party meetings, in their party executive committee meetings and they have the right to move directions to their partymen. If any one of their partymen resents it, and comes to me and says: this is not a mere direction, it is an obstruction in the performance of my duties as a member, then I shall consider it".⁴

Again in 1978, Sh. Eduardo Faleiro gave notice of a question of privilege against the Prime Minister and office-bearers of the Janata Parliamentary Party for convening a meeting of the party to bring about a party decision

4. Lok Sabha Debate, 1 August, 1973, pp. 4514-29.

regarding action to be taken on the Report of Privileges Committee. The Prime Minister in his comments on Sh. Faleiro's motion, informed the Speaker that the matter was discussed but no whip was issued by the Janata Party in the matter. Withholding his consent, the Speaker observed:

"... The earlier rulings in the House have established that the House will not take note of any discussion at party meetings. When the House decides a question of privilege, it functions as a quasi-judicial body. The motion before the House cannot be viewed from a partisan angle. But even in a matter like this, there is nothing wrong for a party discussing the matter so that members may have an opportunity to convince other members about the right approach to the motion before the House".⁵

ISSUE OF WHIP AND THE FUNDAMENTAL RIGHTS:

It is indeed surprising to note that the office of the Whip does not find its place in the original Constitution as

5. Lok Sabha Debate, 28 December, 1978, pp. 314-20.

well as in the Rules of Procedure of the House. Even the political parties till the enactment of 52nd Amendment Act, did not have any constitutional validity. But subsequently, the office of Whip has gained currency in the present context especially when the Minister of Parliamentary Affairs, Shri H.K.L. Bhagat issued whip to the two members of the party, Shri Ram Dhan and Shri Rai, to abide by their directives. However, before entering into the facts of the controversy, it is of prime value to analyse the provision regarding office of Whip, vide 52nd Amendment Act and the disqualification clause henceforth. The Amendment regarding disqualification provides that:

- i) If he has voluntarily given up his membership of such political party; or
- ii) 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 15 days from the date of such voting or abstention.

Undoubtedly, the provision enlisted above gives recognition to the political party and henceforth, the leadership and any case of overstepping the boundaries by the member is bound to attract the disqualification clause (6 and 8) of the Act. But at the same time, it can be inferred that to attract disqualification, a member has to exercise his voting right (whether against/abstention) contrary to the party directives and subsequently a petition is filed against him to disqualify from the membership. It did not, in fact, apply to the acts other than voting and the members' right to freedom of speech and expression vide Article 19 remains intact. The cases of difference of opinion does not and should not entail a member for disqualification.⁶

The right of freedom of Speech in Parliament is guaranteed under Article 105(1) of the Constitution only "subject to the provisions of the Constitution and to the Rules and standing orders regulating the procedure of Parliament". The whips issued under any circumstances should be only to assist the Speaker in maintaining discipline and they cannot usurp the functions of the

6. Subhash C. Kashyap, Anti-Defection Law and Parliamentary Privilege, N.M. Tripathi Pvt Ltd, Bombay, 1993, pp. 75-77

Speaker and attempt to enforce rules. As far as the whip is concerned, there is only one oblique reference to whip in Tenth Schedule of the Constitution. It is very clear that as far as the ambit of powers of Whip is concerned, it is also related to voting or abstention. When a whip is given for voting in a particular manner, then voting against or abstention is the violation. Again, if it is condoned by the legislative party, in that case also, the Speaker cannot disqualify him. Only when they send him the copy of the whip, with the resolution that because of the violation, it has not been condoned and action has been taken, then only, Speaker is within his powers to declare that the member loses the membership of the House. As far as the restriction imposed on the freedom of speech guaranteed under Article 105 are concerned, only Rule 352 is applicable. As a result of that, we find that the freedom that the members enjoy in the House is relatively unfettered as compared even to the freedom of speech that is enjoyed by the citizen outside, under the Fundamental Rights guaranteed by the Constitution.⁷ Also, in the case of Article 19(1)(a) (i.e., freedom of speech and expression), the position to be

7. Hrudaya Ballav Das, "Parliamentary Privileges and Independence of Judiciary", The Indian Journal of Political Science, Vol.55, July, 1991.

gleaned in the light of the judgement in the Sharma's case, read with the Supreme Court opinion on the Presidential reference of 1965, is that the privilege of the legislature or anything done in pursuance thereof is not open to question on ground that it contravenes Article 19(1)(a). On the other hand, it has been held in the Reference Case that Article 21 (Protection to Life and Personal Liberty) would extend to uncodified privilege - that is, no rule made by legislature or any privilege claimed by it can contravene the above article. It has been held by Supreme Court in the same case that the uncodified privileges are subject to Article 20 (Protection in respect of Conviction for Offences) and Article 22 (Protection against Arrest and Detention) of the Constitution.⁸

Moreover, any investigation outside Parliament in respect of anything said or done by members in the discharge of their parliamentary duties would amount to a serious interference with the members' rights. Even though a speech delivered by a member in the House may amount to contempt of court, no action can be taken against him in any court. A court, being an outside authority, does not have the power to

8. Basu's Commentary on Constitution of India 5th edn., Volume II, p. 598.

investigate the matter. Article 122 specifically forbids any inquiry by courts into proceedings of Parliament. It may therefore be seen that the judgement of the Supreme Court in the Search-light⁹ case is final till today, in so far as matters of privilege are concerned.

Thus, matters of parliamentary privilege should not be raised lightly and when raised, they should not be treated as party matters, but as matters involving the prestige, position and rights of the entire House and all its members. No law, however, has so far been enacted by Parliament in pursuance of this provision to define the powers, privileges and immunities of each House and its members and the Committees thereof. As far as the Constitutional stipulations "until defined by Parliament by Law" and the question of defining or codifying the parliamentary privileges are concerned, opinions are still divided. The only wisdom, therefore, lies with the Speaker by his astute handling of the situations.

9. Quoted in S.C. Kashyap, n.1, pp.170-71

CHAPTER V

SPEAKER AND THE ANTI-DEFECTION LAW

In the successful working of our parliamentary institutions, among others, the office of Speaker has played an important role and it would not be an exaggeration to say that our successive Speakers by their knowledge, vision, impartiality and qualities of head and heart have contributed a great deal towards this direction. In the evolutionary scheme, the office of Speaker has derived its strength from the constitutional provisions especially enunciated for this office. However, the provisions via Tenth Schedule (popularly known as Anti-Defection Law) has brought this high office into the vortex of contradictions and challenges.

No other office has become so important in the eyes of Anti-Defection Law than the office of Speaker. The Speaker, who is normally expected to work above the partisan line in recent years, has been subjugated to many controversial challenges, eroding the very base of this august office. The Anti-Defection Law requires the Speaker to discharge so many functions and especially related to the party politics and their internal bickerings and also act as quasi-judicial

authority in matter of deciding the cases of disqualification on the ground of defection are nonetheless no easy work in our fragmented and unstable political situations.¹

However, before analysing the functional aberration of the Act vis-a-vis the position of the Speaker, it becomes imperative to underline the rules and regulations within the Anti-Defection Law under which the Office of Speaker has to decide the matter of disqualification.

Laying down certain rules and regulations for the Speaker/Chairman, as the case may be, it provides the procedure with regard to expulsion/admission of a member of the House from the party. The Lok Sabha (Disqualification on Grounds of Defection) Rules, 1985, stipulated that every such petition alleging disqualification should be addressed to the Secretary-General of the Lok Sabha, containing a concise statement of the material facts against the alleged Member of Parliament (M.P.). It is also provided that the Speaker would seek the reply from the affected party within 7 days after receiving the petition from the leader of the party concerned. The decision of the Speaker in this regard

1. The Indian Journal of Political Science, Vol.52, No.3, July-September, 1991, p.5.

shall be notified in the Official Gazette and forwarded to the Election Commission and the Central Government. Likewise, the state governments also framed the similar rules and regulations for the application of the disqualification clauses of the Act for their legislators.²

Secondly, the Chairman or the Speaker of the House has been empowered to make rules for giving effect to the provisions of the Schedule. The rules required to be laid before the House and are subject to modifications/disapproval by the House³; and

Thirdly, Direction 120 of the Directions by the Speaker provides that the Speaker may recognise an association of members as a parliamentary party or group for the purpose of functioning in the House and his decision shall be final. Under Direction 121, an association of members who propose to form a parliamentary party should have strength equal to the quorum fixed to constitute a sitting of the House. An association of members who propose to form a parliamentary group should have at least a strength of 30 members. If the above requirement is not

2. The Constitution of India, Tenth Schedule.

3. The Constitution of India, Tenth Schedule.

satisfied, the Speaker may declare such member(s) as unattached.⁴

However, the above provisions have not acted to give foolproof against the defecting members and the Speaker being drawn on the controversial wicket. In such situations, as the law stands today, it would be wise on the Speaker's part to read only the Constitutionality of the law to avoid criticism.

The political scenario of instability which was obtained in the country after the split of Janata Dal in November 1989, also called in question the impartiality and neutrality attached with the office of Speaker. Doubts were raised that the Indian Speaker, while handling the situation arising out of dissident activities amongst the elected members and the 'split' caused in the Janata Dal, did not act judiciously and impartially. It was alleged by the opposition parties that the role of the Speaker of the Lok Sabha and the Speakers of Rajasthan, Gujarat, Uttar Pradesh and Bihar, in granting official recognition to the rebels of the breakaway group of the legislators, was not a sign of impartriality, especially when they (defectors) had openly

4. Ibid.

flouted the party whip. Their voting behaviour, contrary to the party whip virtually incurred the disqualification as laid down in the Anti-Defection Act. The voice was raised that the Lok Sabha Speaker should have declared them disqualified according to the spirit of the provisions of the Act. Different legislative parties moved their petitions lodging the complaints against the behaviour of the defectors and urged the Speaker to declare them as disqualified under the Anti-Defection Law of 1985.⁵

The recent experience has shown that the Indian Speaker has not acted in an impartial and independent manner in dealing with the cases of disqualification of the legislators arising out of the 'split' of a party or violation of the party whip on confidence motion and other cases of floor crossings. The way in which the members of the legislators changed their party affiliations with the desire to grab power, has dragged the august body into fresh controversies. The very purpose of the Act, has perverted the spirit and action there by causing immense loss to the body politic. These aberrations would be amply clear by analysing different cases of defections in recent past.

5. K. Ganeshan, "Constitution and Anti-Defection Law", The Indian Express, 16 December, 1988.

CHANDRASHEKHAR'S CASE:

The National Front Government led by Mr V.P.Singh was voted out of power on November 7, 1990 following defections of thirty-seven members of the Janata Dal. The list of these defectors was submitted to the then Speaker of Lok Sabha, Mr Rabi Ray, on November 6, 1990 by its leader Mr Chandrashekhar, informing him about the split in the Janata Dal and the formation of a new political party. On the eve of the Vote of Confidence in the Council of Ministers led by Mr V.P. Singh, the Speaker declared the twenty-five members of the breakaway group of the Janata Dal as 'unattached'. Notwithstanding the ruling of the Speaker, the leader of its group Mr Chandrashekhar staked a claim to form the government at the Centre with the 'outside' support of the Congress (I) and he could successfully form the government at the Centre. The purpose of a split in the Janata Dal, thus, was fulfilled by forming the government.

A petition on behalf of the Janata Dal was filed to the Lok Sabha Secretariat for the disqualification of 31 members of the Janata Dal for defying the party whip and voting against the National Front Government. This list included all those dissidents who had been expelled from the Janata Dal and who had already been declared 'unattached' by

the Lok Sabha Speaker. On the other hand, the Janata Dal dissident leader also filed his petition urging the Speaker to revoke his order declaring the 25 Janata Dal faction Members of Parliament as 'unattached' and appealing to recognize them as a separate political entity (the Janata Dal Socialist) in the Lok Sabha, under the Tenth Schedule of the Constitution. His plea was that the breakaway group of 37 members of Janata Dal constituted the strength more than 1/3rd of Janata Dal Parliamentary Party as required by the Act. Therefore, the question of application of clause 6 and 7 of the Anti-Defection Act did not arise.⁶

Simultaneously, the Delhi High Court, on January 8, 1991 directed the Speaker to maintain status quo in respect of the disqualification proceedings against all the 37 Members of Parliament of the Janata Dal (S). This order was passed by a full bench of the High Court when a petition seeking the direction of the Court was filed by the Janata Dal (S) members, maintaining the ground that there was virtually a split in the Janata Dal; all the 37 Members of Parliament constituted

6. The Indian Express, New Delhi Edn, 9 November, 1990.

more than 1/3rd of the Janata Dal and they had the right to form a new party.

The curtain was finally brought down on this ugly episode by an astute Speaker who, displaying an extraordinary sense of fair play, judiciously solved the disqualification dilemma on January 11, 1991. In view of the controversy over the timing of expulsion in relation to the timing of the split, Rabi Ray, raising above narrow party considerations, gave the benefit of doubt to the dissenters⁷ and recognised split as a one-time process which began and closed on 5 November.⁸

A decision to this effect not only made the split in the Janata Dal a reality and bestowed credibility upon the Chandrashekhar Government, but also saved the country from a period of political uncertainty. However, the disqualified members included Sarvashri Basavraj Patil, Harmendra Singh Banera, V.C. Shukla, Sarwar Hussain, Bhagey Govardhan, Devendra Amar and Bengali Singh. Another member Dr Shakeelur Rehman was disqualified for being a member in terms of Para 2(1)(a) of the Tenth

7. M.C. Bhandari, "Disqualification: Make it Justifiable", The Hindustan Times, 19 November, 1990.

8. S.C. Kashyap, "The Anti-Defection Law and Parliamentary Privileges", N.M. Tripathi Pvt Ltd., Bombay, 1993, p.38.

Schedule. All these eight Members of Parliament - five of them ministers - ceased to be members of Lok Sabha with immediate effect.

Notwithstanding the operative part of the Ray ruling, nothing could be more interesting than Speaker Ray, of all persons, making the following observations in the course of the ruling:

"There is widely held view including that of common man, and a view which I share in many respects, that the existing law on defection suffers from several lacunae in regard to substantive matters as well as procedures".

"The present goings on in the country are indeed deeply disturbing and distressing and if the situation is allowed to drift, people will lose their faith in the system".

"If our ambitions and greed for power overtake the national interest and the interests of the people, then surely the future is dark".⁹

9. S.C. Kashyap, n.8, Annexure III, pp. 398-411.

AJIT SINGH'S CASE:

In the present controversy, Ajit Singh and the twenty Members of Parliament's case, the facts of the case illustrates that:

25-12-1991: Ajit Singh expelled from the party for six years

04-01-1992: Rashid Masood, Satyapal Singh Yadav and Harpal Panwar expelled from Janata Dal.

15-01-1992: Ajit Singh moves to Delhi High Court challenging the expulsion. The Court stayed the expulsion but vacated the stay after five days.

04-02-1992: Janata Dal(A) (called asli Janata Dal) launched Ajit Singh elected President of the new party.

20-07-1992: Janata Dal President, S.R.Bomma expelled four Ajit supporters.

01-06-1993: Speaker Shivraj Patil recognizes Janata Dal (A) as a political party.

Twenty of the 59 members of the Janata Dal appeared before the Speaker physically in one group, at the same time claimed that they belonged to a group and should be seated separately from the Janta Dal members led by Shri V. P. Singh. Even though eight

of these members had been expelled earlier by the Janata Dal leadership in two separate spells, most sensibly and unlike his predecessor, Shri Shivraj Patil did not declare them 'unattached'. He had only allotted them separate seats in the House. They continued to be shown as among the 59 Janata Dal members in all official Lok Sabha records. Obviously, the Speaker realised that it could not be otherwise. They were elected on Janta Dal ticket and the Anti-Defection Law did not recognize expulsion of elected members by the party leadership. But even if they were declared as 'unattached', that also would have been for the very limited purpose of allocation of seats in the House. For the purpose of the Constitution and the Anti-Defection Law in the Tenth Schedule, they would have continued to be Janata Dal members irrespective of any 'expulsion' or 'unattached' declaration. The only way their party labels could change or get modified was through 'split' or 'merger'.¹⁰

The group of 20 also fell outside the purview of the Act, because of its strength of one-third, which made Speaker's job much more difficult. The speaker, "instead of pronouncing a prompt judgement and settling the issue in one

10. S.C.Kashyap, n.7, pp.43-45.

go, decided to do it in stages, to go slow and to move extra cautiously. By an interim order, without deciding the main issue, he allotted separate seats in the House to the group of 20 members for purposes of functioning in the House under Rule 4 of the Rules of Procedure and Conduct of Business in Lok Sabha. This proved counter productive. The Speaker was perhaps ill-advised to allot a separate block of seats to the 12 unexpelled members of a recognized party without deciding the question whether the group of 20 represented a faction of the Janta Dal which had arisen as a result of a split in the Party. But there could be no earthly justification for the bad behaviour of the members towards the Chair. Also on the merits of the case, so far as the law was concerned, the Janta Dal leadership and their fellow travellers in the opposition had no case at all in the matter of the split.¹¹

It is true that Speaker, Rabi Ray, had in his wisdom ruled that split was a one time affair and not a continuous process. But obviously, he was not well prepared to foresee the incongruity and untenability of the consequence of any such rulings. Subhash C. Kashyap, speaking on the matter opines, "the split in the national party cannot be in the

11. Ibid.

nature of guillotine that suddenly falls and in a precise moment divides the party membership into two. Members of the national party may be spread over the entire country. They are thinking human beings. When differences arise within a political party and a group decides to break away causing a party split, individual members in its legislative party need to have full information about the respective groups, their leadership and points of differences. They certainly are entitled to some time to make up their minds and decide which way to go. It is invariably a process. Of course, at the time of making a claim, the legislative party group must not consist of less than one-third of the party membership in the House".¹²

Notwithstanding, the several decisions of Presiding Officers, the Tenth Schedule has no concept of a 'split' in the legislative party as such. Split in Para 3 refers only to split in the original political party outside. And for split in original political party, there is no requirement of any number or proportion of party members breaking away. Thus, the faction headed by Shri Ajit Singh had 'arisen' as a result of the 'split' and that it consisted of not less than one-third of the legislative party membership.

12. Ibid.

So, interpreting the law in far-reaching legal and political implication, the Lok Sabha Speaker, Shivraj patil, disqualified four members of the Ajit faction of the 20-Member Janata Dal in the House with effect from June 1, 1993 and recognized rest of the 16 members of the group as a separate faction of the parent party from the day they decided to form a new group.

RAM LAKHAN SINGH YADAV AND THE 'SEVEN SAVIOUR'

The facts of the case illustrates that Janata Dal (A) comprised of 20 members, four of its members stood disqualified as defectors by the order of the Speaker. The order of disqualification was, however, stayed by the Supreme Court, pending its decision in the matter; Janata Dal(A) decided to support the no-confidence motion against the Rao Government and a three line whip was issued to all its 20 members to support the motion. The voting on the crucial motion showed that seven of the Janata Dal(A) members including some of those who had been disqualified by the Speaker earlier had disobeyed the directives of their party and voted against the motion. There was some dispute about one of the seven members having been influenced to change his vote in the lobby. Janata Dal(A) was reported

to have called for the explanation of the members for disobeying the party whip but no response was received. Janata Dal(A) filed a petition before the Speaker seeking disqualification of members for voting in the House contrary to the party directives; while the Supreme Court and the Speaker were seized of the matters involved and had still to start the necessary proceedings and take their decisions, all the seven defectors were honourably admitted to the Congress(I) and even some of them like Ram Lakhan Singh Yadav were awarded with the ministership.

From the scrutiny of the above facts, it becomes clear that there was no split in the political party outside the House before the voting on the no-confidence motion and as such no separate faction could have arisen; the functioning of the government in otherwise case would have become impossible.

However, this is candid admission of the reality that the supreme value in the minds of our leaders today is that of somehow continuing in power, to remain minister at whatever cost in terms of sacrificing principles or ethical values. It is a sad commentary on "we, the people of India that all of

us have become so insensitised that nothing seems to shock us any more".¹³

The case of these 'seven saviours' of Rao's Government is a crystal-clear case of defection under the provisions of Anti-Defection Law contained in Tenth Schedule of our Constitution. It is one of the most blatant and entirely indefensible case of its violation. If they cannot be disqualified, the minimum that can be done is to at once repeal the Anti-Defection Law and to stop decrying unprincipled defection and use of money, power in our political life.¹⁴

It is to be hoped that the Speaker will take an early decision in the matter even knowing fully well that it is unlikely to leave the ruling party very happy or comfortable.

Also, it is to be acknowledged that these serious lacunae in the Anti-Defection Law have equally influenced the stability of the state governments. The states, where the evils of defection have been most blatantly practised, included Haryana, Manipur, Goa, Meghalaya, Kerala,

13. S.C. Kashyap, "The Seven Saviours: The Most Blatant Case of Defection Yet", The Indian Express, 27 September, 1993.

14. Ibid.

Pondicherry, etc. to the extent that these governments were brought down in the hands of defecting members. There were problems under the Anti-Defection Law in several other states as well, as in Madhya Pradesh, Gujarat, Bihar, Andhra Pradesh, Uttar Pradesh, Punjab, Himachal Pradesh, Arunachal Pradesh, etc. No particular party could be blamed, as they all behaved in accordingly similar pattern. The irresponsible manner in which the Speaker and the Governors exercised their powers brought disgrace to their high offices and sometimes led to the brink of open confrontation with the judiciary.

GOA

In Goa, the then Speaker, Barbosa, was alleged to have engineered defections himself to become the Chief Minister. Later, the Speaker who had disqualified some members was himself shown the door and his successor requalified the disqualified members.

On 13 December 1990, the Speaker of the Goa Legislative Assembly, Shri Surendra V. Sirsat, dismissed a petition against six members of the Congress Legislative Party. The six members being more than one-third of the Congress Party members, claimed that they had split from the Congress

Legislative Party and formed a separate party, but they objected to the petition on the grounds of non-maintainability, as requirement of Rule 6(6) & (7) under the Tenth Schedule had not been complied with - the petition was not duly signed and verified, and documentary evidence had not been produced. Interestingly, the six members in question had left the Congress Party with the then Speaker, Dr L. P. Barbosa, and had formed the new Goan People's Party under his leadership on 24 March, 1990 and withdrawn support from the Congress Government of Chief Minister, Shri P.S Rane.

The same day, i.e., on 13 December, 1990, Dr K.G. Jalme, a member of the Goa Legislative Assembly elected under para 6(I) of the Tenth Schedule to consider a petition for disqualification of Speaker, Dr L.P. Barbosa, decided that Dr Barbosa had become subject to disqualification for having voluntarily given up the membership of his party and having formed or joined under his own leadership a new Goan People's Party. Dr Jalme held that the protection of exemption under Para 5 of the Tenth Schedule was available to a Speaker only for purposes of being non-party or above parties while discharging the duties of a Presiding Officer. It could not be used to encourage

the Speaker for becoming an active politician while remaining Speaker.¹⁵

BIHAR

On 9 November, 1990, the President of the Janata Dal, on the recommendation from Shri Laloo Prasad, leader of the Janata Dal in the Bihar Assembly, expelled 10 MLAs (Shri Raghunath Jha and others) from the Janata Dal and were declared 'unattached' on 10 November, 1990. On 18 November, 1990, the Janata Dal President informed the Speaker that he had revoked his earlier decision in respect of two of the 10 members. However, after giving an opportunity to all the other eight members also to be heard in as much as there was no provision for expulsion in the Tenth Schedule, the Speaker found no option but to confirm the 'unattached' status. They could not be disqualified, the Speaker could not force them in the Janata Dal fold and being less than one-third, they could not be considered to be a separate group protected under the split provision.¹⁶

15. S.C. Kashyap, Anti-Defection Law and Parliamentary Privileges, N.M. Tripathi Pvt Ltd, Bombay, 1993, pp.16-18.

16. Ibid, p.19.

METHALAYA:

In January 1990, Mr Lyngdoh caused the toppling of Meghalaya Government. Twenty-one members of Capt. Sangma's United Meghalaya Parliamentary Front claimed to have formed another party.

NAGALAND;

The fact of Nagaland crisis is alarming. Twelve legislators decided that the Anti-Defection Law is an opportunity rather than a restraint. So, they defected. Not on any point of principle differences but they simply defected. Their reward was immediate. Each one became a minister in a two-tier, thirty-member executive, which is half the strength of the House, and all but six of the new United Legislative Front.

HARYANA;

On 26 March 1991, the Speaker of the Haryana Vidhan Sabha declared three members - Vasu Sharma, Rao Ram Narain and Azmat Khan - as having incurred disqualification under Para 2(1)(a) of the Tenth Schedule. Their claim of

protection under the split clause was not accepted as they had not joined the Janata Dal (S) on the date of the split, i.e., 6 November 1990, but did so subsequently, while this could be considered as a second split, the three did not constitute one-third of the members. They were, therefore, not entitled to protection.

Earlier on 6 November, the Speaker, when duly informed of the formation of a distinct groups of Janata Dal (S) party consisting of 41 members, had recognised it under the Tenth Schedule and the Rules, as they were more than one-third of the then strength of the Janata Dal in the Vidhan Sabha.

In another case, on 10 April, 1992, the Speaker of Haryana Vidhan Sabha, dismissed the petition against a BJP member, Shri K.L. Sharma, on the ground of defection from BJP and joining the Congress. The facts were that Shri Sharma had earlier broken away from BJP and formed a separate party BJP(K). His claim of a split in BJP was recognized by the Speaker. Subsequently, he made a claim for the merger of his BJP(K) in the Congress. Merger was accepted by the Congress and also recognized by the Speaker.¹⁷

17. Ibid., p.26.

MANIPUR;

On 26 July 1990, the Speaker of the Manipur Vidhan Sabha, Borababu Singh, decided that the seven of the Congress (I) members had incurred disqualification as from 24 July 1990 under the Tenth Schedule for having voluntarily given up the membership of the party. The claim of protection under the split clause could not be recognised as the number was less than one-third of the Congress (I) membership. Earlier, of the 26 Congress (I) members in the House, 14 had written to the Speaker claiming a split. However, seven of them subsequently retraced their steps and said that they continued to be with Congress (I).

The disqualified members moved the Supreme Court challenging the validity of the Anti-Defection Law. The Court quashed the disqualification of members in November 1991, but by then, 7 more had been disqualified. Speaker, Borababu, refused to be bound by the Supreme Court decision. After a protracted battle, Borababu sought to defuse the developing ugly situation by agreeing to abide by the Supreme Court decision and to rescind the disqualification. This did not, however, prevent him from disqualifying another batch of 13 MLAs on 24 April, 1992 after President's Rule was lifted on 9 April 1992 and as Congress led

coalition government was installed in office under the dubious circumstances. It was reported that in a sixty-member House as many as 21 MLAs stood disqualified, reducing the effective strength to 39 only.¹⁸

It is quite clear that the entire policy underlying the Anti-Defection Law has failed. If quantitative proof is needed, three Governments fell in the first five months of the year 1990 as a result of defection. States with small legislatures are particularly vulnerable because it is easier to persuade one-third of a relatively small party in a small legislature to defect. As soon as one-third rule is satisfied, the defectors are immune, and outside the pale of constitutional expulsion from the House. In such a situation "the spirit of the Anti-Defection Law is hardly satisfied because under these precedents (Nagaland, Meghalaya, Goa, etc.) gang opportunism is preferred to individual opportunism".¹⁹

Moreover, the Speaker while discharging his duty in most recent times have always tried to refer the points to the Supreme Court before arriving at any decision. It is

18. Ibid, pp. 27-28.

19. Rajeev Dhawan, "Governor, Speakers and Defectors", The Indian Express, 23 May 1998, p.8.

hardly understandable in the present context of Indian political functioning mainly because:²⁰

(i) The Constitution casts the duty of deciding cases of disqualification under the Tenth Schedule on the Speaker. The Speaker, therefore, cannot surrender his authority or pass on his responsibility to the Supreme Court.

(ii) While the Tenth Schedule has sought to make the Speaker the final authority and bar the jurisdiction of the Courts in the cases of disqualification on grounds of defection, the Supreme Court declared the Para 7 of the Anti-Defection Act ultra-vires and held that the Speaker under the schedule can only act as a tribunal and his decisions are open for judicial review.

(iii) Finally, the Speaker, as the matter stands today in the Constitutional Scheme, has no right to refer the matter to the Supreme Court. It can be only done by the President under Article 143 for opinion. The Speaker, however, can at best seek opinion from the Attorney-General and not the Supreme Court directly.

Therefore, in the spirit of democratic principles it would be of utmost value to see that the Speaker rises

20. S.C. Kashyap, n.8, p. 46.

above the narrow party affiliations and save the August Office from the constant attack and humiliation. It has further generated the tug-of-war between the Parliament and the Judiciary, resulting into the flood of petitions in the Court of Law against the decision delivered by State Speakers from time to time. It is, however, important to mention that mere legislative measures cannot cover the entire field. The democratic conventions have to be evolved, coupled with some statutory provisions to circumscribe ills of our parliamentary democracy. Loopholes are bound to remain which are to be plugged by the prevalence of healthy traditions. But to cure the disease forever, the people shall have to be educated and trained in the right direction, so that a healthy and awakened public opinion is generated to punish the culprits and to discourage unprincipled defectors. The electorate should be made more vigilant to have a strict control over their elected members.²¹

21. N.S. Gehlot, "The Anti-Defection Act, 1985 and the Role of Speaker", The Indian Journal of Political Science, Vol.52, 1991, p.340.

CONCLUSION

It is one of the most simple fact that in the democratic maturity of Indian polity, there had been growing anxiety and bewilderment over the drift of affairs. In past several years, we have been too preoccupied with symptoms to give thought to the causes of malaise. It is, therefore, arguable to deal with the deeper source of petty fumbling and periodic dramatics of our political operations to secure a future for this land of otherwise immense potential and vast capabilities.

Any study to the "political defections" is indeed ambiguous and leads to many unwanted and disgusting exercise. The malaise that afflicts the political process is, of course, deeper than just the emergence of new set of power grabbers. In some way the latter are only a symptom of the real malaise. This lies in the virtual collapse of institutions, in particular the Parliament (and State Legislatures) and the Party system, but also the Judiciary, the Civil Services and even the Press (the so-called 'fourth estate'). The model with which we started was one of entrusting to these institutions the entire task of social transformation, the chief instrument of which was to be a system of representation. This system though bridged the gap

between the government and the people but could not play the role of responsible and the real author of change. The available forces of criminalization, corruption and communalism as well as a complete lack of understanding of the role of politics in our society have often reduced the system of governance to personal equations and arbitrary power plays and ultimately, to extra-constitutional coteries, lumpenization and uninhibited corruption. Also, there has been a gradual handing over of the public arena to 'brokers', 'fixers', 'wheeler-dealers', 'money-bags' and now increasingly 'racketeers' and out and out criminals.

With such high demoralisation of political personality in general, the legal solution was charted out to meet the exigencies of different circumstances, striking at the very root of our democracy. The Anti-Defection Law (as enshrined in the Tenth Schedule) was one such step to cure the disease which had spread in the basic organ of our body politic. The high hopes were expressed with the passage of such laws by the then enthusiastic leadership of Rajiv Gandhi. While speaking in the Rajya Sabha, he referred to the first of the Seven Social Sins listed at Rajghat; "Politics without Principles". This first step, though with reservation was taken as the 'signal of hope' to shape the public life, integrity and morality of individuals, groups and political

parties. The then Law Minister, Mr Ashok Sen, expressed in similar vein that "with the passage of the Bill, washing dirty linen in public as well as horse-trading would be eliminated from the political system".

The objective of the Anti-Defection Law was stated to be to cure the evil of unprincipled defection by legislators while leaving scope for realignment of forces in the House by way of merger of two or more legislative parties or split in an existing party as part of the process of reaching ideological polarisation of the like. By using the device of expelling as many members of the breakaway faction claiming a split as might be necessary to reduce them to less than one-third, some party leadership of the day have tried to completely nullify every legitimate split in their ranks irrespective of their constitutional sanctions for such split. Paragraph 3 of the Tenth Schedule can be interpreted in two different ways. One interpretation may be that under it, a split in the original political party of the member is a condition precedent for the Speaker to recognize a split in the legislative party. If that be the correct constitutional position, the Speaker has to satisfy himself that a split in the original political party of the member has actually taken place before recognising the split in the legislative party. But another perhaps feasible

interpretation maybe that it is not the job of the Speaker under the Tenth Schedule to decide whether a split in the original political party has taken place or not. Whenever any such claim is made in the House, he has to ascertain that the number constitute one-third or they attract the disqualification clause of the law.

Though, much of the arguments have been put in the previous chapters, a consensus for amending the law exists. For example, in the matter of split, it was conceived as one-time phenomenon occurring at a particular moment and covering only those members who at that point of time constituted the breakaway group or whether as a result of a split in his original political party every member was allowed some time to make up his mind and decide which faction he should join. Split in an All-India Party cannot, after all, be conceived as a sudden guillotine falling from above at a precise point of time and cutting the party into two clear bits. Therefore, even in ideal conditions, it cannot and should not be treated as one time affair and members would be justified to decide about their future support within the stipulated time frame, if it is consciously laid down in the statute book.

Again judging from the fundamental reference to political parties, no reform to the Anti-Defection Law would be meaningful unless conception, structure, functioning and role perception of political parties are clearly defined. Parties as they exist and operate today hardly deserve any protection against defection by their members. If parties are not based on any principles, ideologies and programmes and if they are not democratically run, there can be no question of any principles being involved in either defecting or staying with a party. Again if we are sincere, then, not only should the political parties be clearly defined by law, but also their registration should be obligatory either under the Registration of Societies Act or under a separate law for the purpose to be enacted by the Parliament. Every party must be open to all citizens notwithstanding distinctions of any kind, internal organisation must be democratic with periodic elections to the highest party bodies and offices, and accounts of all parties should be invariably subject to audit. There should be a categorical provision of deregistration of parties that fail to comply with the requirements of law and no such party should be allowed to set up any candidate for election to a seat in Parliament or State Legislatures or for any public office. The number of political parties has to be

reduced by law providing for a strict percentage of nation-wide or state-wide vote being compulsorily for recognition as a national or state party. Only national parties should be able to contest seats for Lok Sabha. State parties can seek representation in Rajya Sabha and, of course, contest elections in the House of State Legislatures.

Moreover, if defection is deemed to be a crime, distinction between individual and group defection must be done away with. After all, notwithstanding the Supreme Court decision on the point, an act by an individual on his own cannot be deemed to be a crime if the same act committed by a group of people is to be deemed entirely legal, legitimate and acceptable under the eyes of law. If we are sincere about outlawing defections, anyone voluntarily changing his party affiliations after being elected on a particular party ticket must automatically and immediately lose his seat in the legislature.

The term 'expulsion' and 'unattached' do not figure in the Anti-Defection Law. It was being repeatedly stressed from scholarly platform that the law needed to be amended to prevent the party leaders from resorting to the device of 'expulsion' and the presiding officers from rushing to declare some members as 'unattached' with the 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 not be open to the party to expel him on the ground of anti-party activities outside the House and take away from him 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. Expulsion from the legislative party of duly elected members should, therefore, be made impermissible during the term of the House. In any case, even if they are allowed under the Party Constitution, they cannot be recognized inside the House for purposes of the application of the Tenth Schedule. Also, if an elected member can be expelled by the party and declared 'unattached' by the Speaker, it stands to reason that he becomes free from the bondage of affiliation to the political party on the symbol of which he was elected for the House, and if no, it should be permissible for him to join another political party or form a new party.

So far as the functioning of a member is concerned, he should have freedom of thoughts and expression within the precincts of the House. The right to dissent and disagree

are the basic requirements of a successful representative parliamentary democracy. 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 Presidents' Address etc., such occasion to be specified by 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 its judgement but it will still be desirable to lay it down in the law clearly.

It should be categorically provided that a defector - whether single or a member of a small or big group - not only instantaneously and automatically loses his membership of the House, but he also cannot be appointed as a minister or to any public office of material benefit or influence without seeking fresh elections. The presiding officer also deserve kudos for taking the courage to say that members changing their parties may not be given

political positions. This becomes all the more courageous in the context of sometimes the entire Council of Ministers and the Speaker himself being from among the defectors, in absence of any law preventing this.

Again, the language of Anti-Defection Law is no less ambiguous when it seeks to disqualify a defecting member. But the rules have sought to considerably dilute or modify the intent and impact of the provisions 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. The Constitution visualises a maximum of 15 days for the party condoning a member's disobedience of the party directives etc., but the Rules provide 30 days time to the parties to provide to the Speaker the necessary information about their members. The time can be extended by the Speaker for such further period (without any limit) as he may agree. If any changes take place in a party, again a period of 30 days or more is allowed for information being conveyed to the Speaker. Even in the matter of condonation, a period of 30 days is provided by the Rules for conveying the information that condonation was made within 15 days, etc. Again, after a petition is received, a lengthy procedure of references, of giving time without any outer limit, is laid down for considering it. There is

yet another delaying procedure whereby the preliminary inquiry is conducted by the 'Privilege Committee' and the matter henceforth decided by the Presiding Officer. The purpose of expeditious decision is again defeated on the court.

Another very important 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 Officer, it can be safely asserted that in present condition, where the Speaker is chosen by the ruling party and depends for his continuance in office on party support, it would be unrealistic to expect him to function entirely without party considerations even in matter 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 the political and highly controversial matter of defections. Also, to maintain the sanctity, it is 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 healthy and unhealthy maneuvering of power politics. It

would have added to the high prestige of the Presiding Officer, if they had unanimously resolved that it was wrong for the Anti-Defection Law to put the Prsiding Officer in a position where they would become subject 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 government. The law could then be amended to entrust the responsibility of determining within a strict time frame, all matters of disqualifications 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 Officer can be subject to review inter-alia by the President or Governor would be a remedy worse than the malady in as much as it would in effect mean that the government could upset the decision of the Presiding Officer. Therefore, instead of ceating a reviewing authority, an independent authority may need to be created to take decision under the Anti-Defection Law so that the office of the Presiding Officers remains free from political controversy and its pristine honour and glory are restored.

It is thus, agreed on all counts that the Anti-Defection Law has not achieved the desired results. The political morality continues to stoop low every day thereby

bringing immense inconvenience in the functioning of the Anti-Defection Law. The functioning of the law has time and again proved that the legal solution to a typically moral problem is no remedy. Moreover, amendment to the Act is not necessarily a guarantee to the improvement of situation in future. But at the same time, it cannot be assessed that the disease cannot be cured at all. The other agencies which would effectively create the atmosphere of better understanding of the laws and the change in electoral practices of our country would be of significant interests and value. As Mrs V.S. Rama Devi, an authority on electoral matters says, "Piece-meal amendments to the anti-defection act is not the answer. There is a need for the overhauling of the whole electoral system of the country". In democracy, ultimately, it is the people who are supreme and they have all the rights to reject those who resort to immoral practices of political defection. Any legislative or constitutional measures are likely to be of limited use.

The argument that ruling elite in our country has a greater responsibility to respect and preserve the rules of Parliamentary government is unlikely to carry much weight in such circumstances. Hence, the public should be educated to exercise vigilance against defections. The voters of the constituencies affected by political defections should call upon the legislators to explain their behaviour.

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