CHAPTER - V

COMPARATIVE STUDY OF THE DEFECTION POLITICS AND ANTI-DEFECTION LAW WITH OTHER MAJOR DEMOCRATIC COUNTRIES OF THE WORLD

5.1 Prelude

5.2 Relative Laws to Check defection games in foreign countries.

5.3 Factors affecting major defections in foreign countries - An analysis.
5.1 Prelude

It has been rightly said that democratic form of government is one of the most effective forms of political system that the human ingenuity has so far devised to ensure the rules of the people for their own good. But, in a democracy, the existence of political parties is indispensable - be it in the form of bi-party system like Great Britain and America or be it in the form of multi-party system like India and France. Though political parties have extra-constitutional existence, they sprang up as private aggregation of individuals but with the passage of years they have become State institutions, governmental agencies through which sovereign power in exercised by the people. To quote Nigel Nicholson "(The party system) reduces multiple points of view to two or three, and makes opinion inside and outside Parliament more manageable. A political party fuses minor differences to the point where they can be ignored, and gives guidance on major issues of policy in such a way that guidance is usually indistinguishable from decision. A party makes vague aspirations articulate and effective. In this sense, its function is so valuable, so irreplaceable, that it is almost impossible to conceive of a democratic society without it."1

However, rule of the majority is the chief ingredient of democracy and quite often it becomes hard for political parties to reach the

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number and the same results in political bargaining or horse-trading and in that sense political defection has become synonymous to party democracy in almost all major democracies of the world. However, in the developed countries, the principles of ethics, morality and culture have been so deep rooted in the minds of both the voters as well as their elected representatives and also the practice of constitutionalism has made the system of governance so perfect that considerations like the lust for power, greed for money and craze for the public office find little place in the minds of the political representatives. Therefore, the need for a specific law to curb defection has not arisen in developed democracies as it has become indispensable in India. But, it can't be said that nonexistence of specific Anti-Defection Laws in other democracies of the world, excepting Kenya, Sri Lanka and Pakistan which has got its own defection law prior to India do not by itself stand as a guarantee that there have been no defections of members of the political parties in those countries. As stated earlier in Chapter-II, that almost all British Prime Ministers during 1940 to 1980 except Clement Attlee and Edward Heath have been dissenters. Hence, there are various legislative measures adopted in different democratic countries of the world to check the factors that proliferate defections.

5.2 Relative laws to check defection games in foreign countries:

5.2.1 Provision for Recall

It is a common knowledge that in Modern Parliamentary democracies, a member once elected has no responsibility to his constituents and he continues to sit in Parliament till the next election arrives and then he goes to the electorate asking for their votes.2

2. Shri H.V.Kamath's speech in the constituent Assembly with regard to the move by way of amendment to Article 82 i.e. the present Article-84 of the constitution.
Hence provision for recall had been incorporated in the Constitution of Switzerland, erstwhile USSR, Rumania and former Czechoslovakia. It has also been incorporated in the Constitution of the 12 states of USA namely Oregon, California, Arizona, Colorado, Idaho, Nevada, Washington, Michigan, Kansas, Louisiana, North Dakota and in Wisconsin. The Constitutions of twelve more States of USA the provision for recall operates only in cities.

The principle underlying 'recall' is that the people may have an effective and speedy remedy to remove a functionary who is not giving satisfaction, regardless of whether he is discharging his duty to the best of his ability and as his conscience dictates. Hence, the recall statutes in the United States do not contemplate a judicial inquiry into the truth or otherwise of specific charges of misconduct. The procedure involves admission of petitions signed by a prescribed percentage of qualified voters and accompanied by sworn statements of the sponsors that the signatures were secured according to law and by a statement of the grounds for the recall to the election authorities. On satisfaction of the genuineness and the sufficiency of these petitions, a recall election is held. This type of arrangement helps prevent the legislators to resort to unprincipled defections.

5.2.2 Imposing Limitation on the Number of Office of Profit

The purpose of imposing limitation on the number of office of profit is that over-ambitious legislators should be denied an incentive to defect and that the defector should go unrewarded. Only, instead of directly denying office of profit to the defector, his prospects of office are indirectly restricted by limiting the total number of offices in the Legislature.

3. The report of the Committee on defections published by the Ministry of Home Affairs, Government of India, p.82.
Other than the Irish Constitution which stipulates the number of Ministers to be "not less than 7 and not more than 15" and the Japanese Constitution in which the legislature is empowered to fix the number of Ministers by law, there is no specific mention on the size of the Government in any other Constitution. In United Kingdom, however there is a law which limits the size of the Ministry to a given number.

In fact, in United Kingdom, such a limitation on offices of profit operates. It is effective indirectly in as much as the restriction is laid on the number who can sit and vote in the House of Commons. Section-2 of the House of Commons Disqualification Act, 1957 requires that not more than 27 Ministers named in Part I and Part II of the Schedule shall be entitled to sit and vote in the House of Commons at any one time. If at any time the number of Ministers in the House of Commons exceeds the number authorised by Section-2, the Ministers appointed after the occurrence of the excess are disqualified from sitting and voting until the members have been reduced by death or resignation to the maximum permitted number.  

With the standard laid down in U.K. i.e. 70 Ministerial officers in a House of 630 - i.e. 11.11%, it would be of interest to have a look at the size of the Council of Ministers which once reached the astounding figure of 93 in Uttar Pradesh the then Chief Minister Kalyan Singh after he owned the Confidence motion in Oct, 1997 in the house of 420 members Assembly for which his cabinet was considered as Jumbo Cabinet. The present size of the Union Council of Ministers is also 77 in a house of 547 members.

But the statute restricting the size of Council of Ministers would necessarily take away the right conferred by the Constitution on the

4. Ibid, p.86.
Prime Minister to have the Council of the size of his own choice. It would also require the President to refuse to appoint a Minister if such appointment exceeds the prescribed limit. There is thus necessary inconsistency between the provisions of law and the Constitution, as both can't be obeyed without infringing another. In Zaverbhai Vs Council of Ministers, it was held "When a statute takes away a right conferred by the other, even though the right to be one which might be waived or abandoned, without disobeying the statute which conferred the right".5

5.2.3 Curbs on splinter parties

There are precedents in the Constitution of other countries of provisions made against mushrooming of parties and against unattached candidates. It must at once be said, however, that these are not countries where the pure majority system in elections applies as in the U.K., France or Turkey, but in Countries where there is either one party rule (like the erstwhile USSR, Yugoslavia or the present Russia) or a mixed system as in previous West Germany (where half of the seats are filled in single-member constituencies and the other half distributed in the form of additional seats according to the voting system of the parties) or the list system of proportional representation as for instance, in Austria, Denmark, Greece and Italy.

The broad outlines of the system in these countries is that the seats are distributed among the competing party lists. Only parties can take part in the election and the party lists must contain the names of the candidates in order of preference. The voter records his vote both for the party and for a prescribed number of candidates depending upon the total number to be elected from the party lists.

Countries applying list systems of proportional representation have introduced rules in their electoral laws which exclude parties from participation in the distribution of seats (leftover after assigning the party quota by use of formulae based on valid votes cast) if they do not fulfil certain requirements. For instance, West Germany has the most far-reaching requirement that a party must have won 5 percent of the valid votes to get a proportionate share in the distribution of additional seats. In Italy, a party should have owned at least 300,000 votes and own one seat in a constituency to be eligible for distribution of votes and seats. In Sweden the Government Commission on Constitutional Revision proposed that a party must have polled at least four percent of the votes in the whole country or 12% in a constituency in order to be entitled to any seat in the Riksdag. Countries like Austria, Belgium etc. also prevent growth of splinter parties by different variations and manipulations of the same principle. To sum up the effect of operation of these restrictive laws against splinter parties in Western Europe: the strongest clause against splinter parties is applied in Germany, followed by Italy and those countries in which the provisions against splinter parties are mainly based on the electoral quota in the constituencies, namely, Denmark, the Netherlands, Austria and Belgium.\(^6\)

It has been suggested that a similar criterion should be used and parties who poll less than the specified percentage of valid votes in the Assembly/Parliament election should be made to forfeit their seats. The idea is that birth of mushroom parties with narrow loyalties should be discouraged and growth of parties on broader platforms of national concern should be encouraged. It is argued that such a measure will eventually lead to formation of a stable two party system

\(^6\) Supra f.n. 3 p.88.
as is obtaining in U.K. but in the present situation it would be violative of Article 19 of the Constitution of India.

5.2.4 Resignation

In Nigeria, political parties have devised the scheme of obtaining undated letters of resignation from the candidates, authorising the leader to place them in the hands of the Speaker in case the Member of Parliament crosses the floor. But, in India, Under Article-103 (3)b resignation becomes effective only when it is delivered or (transmitted through duly authorised agent) by the member himself to the Chairman or the Speaker.

In Thankamma Vs. Speaker, Travancore High Court has held that the resignation under this provision must be a voluntary act of the Member and the Civil Court has jurisdiction to enquire whether the letter of resignation under this provision must be a voluntary act of the Member and the civil court has jurisdiction to enquire whether the letter of resignation was void on the ground that it was forged or obtained by force or fraud and direct the Speaker to allow the Member to take his seat upon declaration that he has not lost his seat by the alleged resignation. On the same ground, the Court can also declare that the advance resignation has become void by virtue of its withdrawal and revocation of power granted by him to the Leader.

5.2.5 Educational

In countries like USA, there are numerous legislative internship programmes open to political scientists, journalists and members of the public, by means of which common level of understanding are developed and the awareness of the duties and obligations of

7. 1952, Travancore - Cochin 161
legislators are widely disseminated. Professional institutions in the field of political science also play a major role. Seminars are arranged for fresh congressmen and state Legislative Service Projects undertaken for newly elected state legislators. At these seminars and projects, which last for two weeks to a month, the new legislators are made conscious of the standards and duties expected of them; orientation programmes to this end are led by senior legislators and experts in the legislative process; the immediate political problems are emphasised and solutions suggested; complexities that may be experienced by the newcomer in regard to committee assignment and service, relationship with part leadership and colleagues, parliamentary procedures and the conduct of legislative business, and constituency education and service are resolved. Thus, the legislator is provided with the essential basic equipment and imbued with the right and proper attitudes. Supplementing this are the annual Distinguished Awards for a representative each from both the major parties selected from both the House and the Senate on the basis of nominations of committee Chairmen and the press crops. This award is widely publicised and is taken as a recognition of dedicated public service and the crucial role played by the awardee as a representative of a freely elected legislative body in maintaining the values and processes of a democratic society.

Developing similar though not necessarily identical schemes and projects in our country is worth serious consideration.

5.3 Factors Affecting Major Defections In Foreign Countries—An Analysis:

5.3.1 Kenya

Following the resignation of Mr. Odinga, Odinga and his followers, Kanu, under the chairmanship of President Mr. Joma Kenyatta, resolved
to amend the constitution for protecting the voters of Kenya from such betrayal by requiring any member of Parliament resigning from his party to resign his seat and seek a fresh mandate from the voters. The measure which was enacted accordingly was to the effect that a rule be established in Parliament that any member who resigned from the political party which supported him when he was elected or resigned from the party with which whole of his former party was subsequently merged should vacate his seat at the end of the session in being or next following and seek a fresh mandate from the electors. This rule was not to apply to cases where a political party ceased to exist as a party in Parliament by reason of amalgamation, coalition or dissolution.8

5.3.2 United States

The position of a Legislator in the United States is somewhat peculiar. While he adheres broadly to the philosophy of the party on whose ticket he is elected, on specific proposals and legislative measures coming before him, he is usually free from rigid party whips. It is true to say (and it has been said) that each congressman or a Senator is a law unto himself. Party lines get blurred over every major legislative action and party affiliations are no guide to his decision or action as reflected in his voting. Over Vietnam, Civil Rights, racial strifes, foreign aid, open housing and other numerous areas of policy different legislators take different postures. This is because each congressman looks to the preferences of his own constituency - a Democrat elected from a farm country with its preoccupation over agricultural imports has nothing in common with a Democrat from, say cosmopolitan, international minded New York. Since party

8. Supra f.n. 3 p.96.
distinction is meaningful only so far as broad principles are concerned and does not govern specific so inside the Legislative Chamber, as much as in the classical pattern of parliamentary democracy, no serious notice is taken of different legislators of the same party voting in different ways on the same subject. In other words, there is no defection because there is no strict adherence.

5.3.3 France

When the Constitution of the Fourth Republic was drafted, it seems to conform to the profound historical traditions of the nation, and in effect represented a compromise among the principal political forces in France. The rapporteur of the Constitution, Paul Caste-Floret (MEP), summed up the debate by declaring before the Constituent Assembly that the Presidential regime might lead to dictatorship, while the Assembly regime would serve revolutionary purposes. The only solution was a balance between the Legislature and the executive. "The Presidential system condemned, the Assembly government discarded, we have no choice but to return to the Parliamentary system".

The election of October, 1945 and June 1946 for the Constituent Assemblies revealed the existence of three large parties, each receiving approximately 25 percent of the total votes, or between 4.5 to 5.5 million votes. The Communists, Socialists and Popular Republicans (MRP) dominated the political scene during the period of constitution making and for the first year of the new legislature. In these two elections the Radical Socialists and allies, grouped loosely in a Rally of the Left Republicans, and the Moderates, each own between 2 and 2.5 million votes. The communist vote remained stable in all succeeding elections, whereas the Socialist lost one million votes between the elections of October, 1945 and November, 1946 and the MRP dropped
one half of its support between November, 1946 and June 1951. The party founded by General De Gaulle in 1947 Rally of the French People (RPF), won 4.1 million votes in June, 1951 attracting support mainly from the former MRP bloc and the conservatives.9

There were three major currents (Left, Right and Centre) with at least two distinct party organisations within each category: Communists and Socialists on the left, Popular Republicans and Radical Socialists in the Centre, and Moderates or Independents and Gaullists or Poujadists on the Right. Each party could count on a solid core of support, with perhaps two million members of the electorate constantly shifting about between the parties or into abstention. The "floaters" (not always the same people, of course) tended to vote MRP in 1945-46, RPF in 1951, either mendesist or poujadist in 1956 and for the Neo-Gaullist UNR in 1958. Between 80 and 90 percent of the voters remained loyal to their parties throughout the Fourth Republic. The deadlock state resulted not from volatility of public opinion, but from deeply rooted divisions.

The political parties of the Fourth Republic were incapable of realising their programmes. The evolution of the political situation either isolated the parties of the left, or required them to sacrifice their ideals in order to participate in a coalition. The parties of the Right likewise had to compromise in coalitions, though they received considerable satisfaction during the second legislature. In the third legislature, however, a socialist-Radical Socialist coalition (Republican Front) excluded the independents from the Cabinet.

The Fourth Republic managed to survive for some twelve years (1946-58). The regime, crippled by basic divisions, was unable to take forceful steps and confront issues clearly. Its leaders became

9. Supra f.n. 3 p.94-95.
masters of compromise, equivocation, and procrastination. Issues of foreign policy, social legislation, colonial relations, education and constitutional reform were never settled. Cabinet instability was itself an expression of this immobility since the same ministers simply changed posts and since the internal contradictions of all cabinets made action difficult.

However, Maurice Duverger wrote "The fact that the average length of a Ministry is about eight months under the Fourth Republic, as under the Third, created an impression of considerable political instability. The impression is false. Frenchmen have a much clearer view of their institution in this respect, and they have long ceased to attach much importance to Cabinet crises. French crises are something like waves on the sea, nothing more than a surface agitation which leave the depth untroubled... the fall of a Government does not bring about great changes: first because, most of the defeated Ministers generally reappear in the succeeding Cabinet, second because, the Senior Civil service is remarkably stable, and third, because, the new Ministry generally execute the same policy as its predecessor".10

He further wrote, "In reality, the fundamental defect of French politics is exactly the opposite of what superficial observers diagnose. France suffers not from excessive instability but from excessive stability, from what has been called since 1953-54 "immobility". It is extremely difficult... to effect any real change in particular institutions, although almost everyone is agreed on their defects. Two or three parties may reach an agreement on the maintenance of status quo; they find it much more difficult to agree on a change. For the status quo is generally the result of an arduously achieved compromise

between different factions of public opinion and has the force of habit. Definition of a new comprise is more often than not impossible".11

Besides, "Frenchmen are used to changes not merely of government but of the whole regime. In 170 years they have had fifteen new Constitutions. The British practice of revolutionising the reality while retaining the name and the face was reversed in France: there the fundamentals of life continued with comparatively little turbulent. The stability and resilience of French life below that surface were unfortunately less striking than the apparent chaos at the top. The well known story of the Paris bookseller regretting that he could not supply a copy of the Constitution 'because we do not deal with periodical literature' dates from 1848; its modern counterpart could be seen in the huge pasters in the Metro just a century later 'Republics pass: Soude paint lasts'. The Fourth Republic was then two years old and had ten more to live".12

However, French administrative structure has stood without fundamental alteration since the reforms of Napoleon. It is tightly centralised system, based on a uniform pattern and closely controlled from Paris (HQ) and therefore it withstood the tide and weather of political instability.

5.3.4 United Kingdom

The principle embodied in Edmund Burke's famous address to his electors that the Legislator is a representative and not a delegate was not accepted in the Tammarth Manifesto of Sir Robert Peel who held that a Member of Parliament may not act in the House except in accordance with the mandate he received from the electors and that

11. Ibid.
having received such a mandate, he was obliged to carry it out even though circumstances may make it undesirable and put it out of harmony with changed public opinion. Ironically, it fell to Pell to repudiate the mandate (Protection of British Agriculture) on which he was elected and to pursue a policy of free trade thereby causing a major break up of his party.

A massive break-away from the Liberal Party lies at the origin of the modern Tory party. Joseph Chamberlin, one of the founders of 19th Century liberalism was chiefly responsible for this. Though a Radical at an earlier stage in his career, he was so deeply opposed to the Gladstone Liberals particularly over the question of Irish Home Rule, that he and over 90 other liberals and Whig M.Ps crossed the floor and voted with the Tories to defeat the first Home Rule Bill and force the resignation of the Gladstone Ministry in 1886. The Liberals Unionists, as they were called, functioned for a while as an independent group, but as the years passed they merged gradually with the Tories to form the present" Conservative and Unionist Party".13

Churchill began his life as a conservative and was returned in the conservative ticket at the 1900 Khaki election. Differing from his party on the question of tariff reforms he crossed the floor in 1904 and joined the Liberal Party. Churchill, however, announced in Parliament that his constituents were entitled to be consulted on the change of allegiance and, if they so desired he would resign and submit himself for re-election. This was not stressed in view of the impeding general election and from 1904 to 1922, Churchill continued as a Liberal. Churchill contested as a Liberal candidate in 1922 but was defeated. Next year when Baldwin sought a mandate for protection,

13. From an article by K.S. Shelvankar in The Hindu.
Churchill was again defeated as a liberal candidate. In 1924 he contested a bye-election as an independent, only to lose, a third time, to a conservative candidate. At the general election that followed, he contested as a "Constitutionalist" on a slogan of his own-. The Red Flag Vs. The Union Jack and was elected. He then joined the Conservative Party and died a Conservative.

Ramsay Mac Donald is another instance. Mac Donald ceased to be a leader of the Labour Party in August 1931 and formed a National Government. He did not resign his seat but within a few weeks of his crossing the floor there was a general election, at which he was re-elected.

Other famous Parliamentary figures like Sir John Simon, Snowdown, Thomas and Sankey of the early thirties a period of severe economic and financial crises were forced to leave their parties and form groups known as Liberal Nationals , National Labour etc. Purists like Harold Laski found fault with their conduct but even critics conceded that their action was inspired by the highest motives and that it rescued Britain from a serious crises.

During the end of 50s and early 60s, there was denial by some Conservative back benchers of their support to the Conservative Government over the Suez Affairs. What is significant, however, is that such members were required by their Constituency association to explain themselves. Some were censured, one was told that the local association would not support him at the next election and would seek a better candidate. In the case of Mr. Nigel Nicholson, the party association in his constituency after hearing him passed a vote of no-confidence (298-92). Mr. Nicholson considered that this vote did not truly represent the feeling among conservative voters in his constituency and he refused to resign. For two years, the local
Conservative association was torn by disagreement. The National leaders of the party suggested that all known Conservative voters in the constituency should be asked to record their views in writing. And the vote was taken; 3671 voted for Nicholson and 3762 voted against. Mr. Nicholson resigned his seat in Parliament, though it was agreed that to save expense and trouble of a bye-election his resignation should not take effect until the next General Election.¹⁴

5.3.5 Sri Lanka

The course of Ceylonese politics from 1948 has a close analogy to the course of Indian politics in two important respects, the number of parties and the instability created by the crossing of the floor. The United National Party (UNP) which was in power in 1948 was itself a collection of diverse political groups. The first two and a half year of UNP were years of extravagance by the Government and their supporters all over the country. Its nine years of power have been characterised by Howard Wriggins as a "generous bonanza of cabinet pasts to reward the faithful and to enlist additional support among key groups of voters".¹⁵ The first defection that of one of UNP's Ministers—took place in 1949 over the UNP Government's disfranchisement of the plantation workers. The Government persuaded the Tamil Congress was given a ministerial post. This led to a split in Tamil Congress(TC) and an important section of it broke off to form the Federal Party(FP).

The second break from the UNP come in July 1951 when S.W.R.D. Bandarnaike, leader of the House, resigned from the Cabinet and the party and formed the Sri Lanka Freedom Party (SLFP). In March,

¹⁴. Supra f.n. 3 p.99-100.
¹⁵. Wriggins Howard, Ceylon Dilemmas of a New Nation.
1952, Prime Minister D.N. Senanaike died of a fall from his horse and this removed perhaps the most outstanding figure from the Ceylonese political scene. It was also the signal for a prolonged period of unsettled internal politics. His son Dudley Senanaike was invited to take over the Prime Ministership. On agreeing to do so, he dissolved Parliament and went to the country (May 1952).

The UNP formed the Government with the support of the Tamil Congress and a number of Independents. Meanwhile the economic difficulties mounted. A state of crises occurred in 1953 when the Government precipitately raised the price of sugar and reduced food subsidies on the oft-repeated advice, particularly of the World Bank. This led to an island-wide hartal by the Leftist parties, paralysis of transport, several instances of violence, firings by the police and summons to the military to come to the aid of civil power. A state of emergency was declared. Prime Minister Senanaike resigned in October 1953, publicly avowing his horror of violence and was succeeded by Sir John Kotelawala.

The UNP found itself drifting further and further away from the immediate concerns of people and in the General Election of April, 1956, it was routed. The General Election of 1956 proved that the opponents of UNP had understood the strategic value of offering the voter the fewest possible choices. The majority of those who fought against the UNP readily arrived at an electoral truce in order to defeat it. The election destroyed UNP as a Parliamentary group but left it as a major party in the country.16

The electoral agreement which gave the MEP its victory at the polls resulted neither in a unified Cabinet nor in any results from the

resumption of party warfare once the truce was over. The elements which composed it owed loyalty to various special groups which put in their claims for services rendered and had to be rewarded with Ministries.

The three years of MEP Government resolved itself into series of crises, each sharper and more exhausting to the body politic than the last. The climax was reached during the language agitation which started in a manner fairly familiar in India. In the Tamil areas in the North a campaign of blacking out Sinhalese letters on the number plates of motor vehicles and nationalised buses triggered a campaign in the south to harass and boycott Tamil-owned shops. In an atmosphere of strikes, counter-strikes and the fulmination of fanatical Sinhalese groups against any surrender to the Tamil, the Federal Party called a convention in May, 1958. Sabotage of trains carrying Tamils to this convention and an explosion in which a number of Sinhalese were killed were the prelude to the present demand of the Sinhalese for a separate State which has culminated in to declaration of a state of emergency on May 2, 1958 again after the death of the then Prime Minister Bandarnaike in Sept., 1959 and the same has been continued quite often culminating in to political uncertainty which are marred by violence and bloodshed.

However, Sri Lanka's constitution of 1976 provides in Article-99 (13)(a) that "where a member of Parliament ceases by resignation, expulsion or otherwise" to be a member of the party on whose nomination paper his name appeared at the time of his becoming an MP, his seat shall became vacant. This is unsatisfactory for two reasons. It is difficult to determine when an MP 'ceases' to be a member of his party "otherwise" than by resignation or expulsion, that is by his conduct. Secondly, it makes expulsion from the party a ground for
expulsion from Parliament. A safeguard is provided for - petition to the Supreme Court, triable by a Bench of three Judges, to determine whether "such expulsion was invalid". The substantive law on the point is the law of clubs. The Courts can rule expulsion on restricted grounds. However, unlike Pakistan's constitution judicial review is provided for.\footnote{Noorani A.G., *Vice of Defections -1 - Three South Asian Laws*, The Statesman, 4 Sept., 1997.}

5.3.6 Pakistan

Pakistan though got its independence in the same time as India got it and adopted a democratic form of government has been ruled more years by military Generals than by elected representatives. However, the days of its rule by the elected representatives, political defection occurs quite often. Between the spring of 1956 and the autumn of 1958, Pakistan had four Prime Ministers.

Only about a fortnight after 1956 Constitution's enactment, Choudhury Mohammad Ali's hold on office was shaken and General Mirza's future tenure more subtly undermined, by completely unprincipled conduct on the politicians part. President and Prime Minister had decided that the best person to be Chief Minister of the West wing was Dr. Khan Sahib; and they had got an assurance of Mr. Daultana's influential support in fixing this. But at the last moment he and other Muslim Leaguers defected, on the pretext of Dr. Khan Sahib's anti Pakistani Past. Not to be outdone, Dr. Khan Sahib contrived by promises of ministerial posts to lure several Leaguers to his side, and went on to form a party of his own, the Republicans - with which President Mirza soon let himself get identified. Disruption among Leaguers, as soon as the President's learnings became apparent, then naturally spread to the Centre; for he would have future political plums
to offer. By August, all but ten of the 36 leaguers in the Assembly at Karachi were Republicans. East wing affairs then got involved. And when, in the course of complex triangular wrangle in October, Chaudhari Mahammad Ali lost his majority and he abandoned the Prime Ministership. His successor was Mr. Suhrawardy, Leader of the Awami League, a component of the East Wing's United Front after the 1954 elections. Interestingly enough in the East Wing, during September, a meaningless vendetta in the Legislature resulted in the Awami League faction getting the Speaker formally declared insane; whereupon, two days later, its rivals of Mr. Fazl-ul-Haq's Krishak Sramik Party, in an organised demonstration hundred pieces of furniture at this Deputy - causing his death.

Then during the night of October 7-8, 1958, a group of Generals led by the Commander-in-Chief seized power, and by means of a proclamation issued through the President, abrogated the constitution of 1956, dismissed the central and provincial cabinets with immediate effects, dissolved the central and provincial Legislatures, abolished all political parties throughout the country and imposed martial law.

Therefore, military coup and martial law has become the order of the day in Pakistan. Barring intermittent democratic government, Pakistan has been mostly ruled by military Generals like Ayub Khan, Zia-ul-Haque and the present General Pervez Musaraff. But, the efforts of the Pakistani Prime Minister Mr. Nawaz Sherif appreciable in the sense that during his tenure he was successful in making an Anti-Defection Bill passed by Pakistan Parliament.

However, prior to this there were other laws in Pakistan's Political Parties Act, 1962, of the Ayub Khan era, was amended in 1985, with

18. Supra f.n., p.97.
the revival of the 1973 constitution; albeit in a form amended by Zia. Section 8B was inserted in the Act to disqualify from membership of the legislature are who "defects or withdraws himself from the political party" of which he was a member. It was to be invoked by its leader through a reference to the Election Commission with the right of appeal to the Supreme Court. The words "defects" and "withdraws" were not defined. The omission was sought to be repaired, on 23 October 1990, by President Ghulam Ishak Khan in an Ordinance amending Section 8B. Defection lay in voting contrary to a whip issued by the "disciplinary Committee of the Parliamentary party" or by acceptance of "any office" under a political party other than his own. "Parliamentary Party" was defined to include an alliance of parties. The ordinance was not re-enacted by Parliament and lapsed.20

On July 1, 1997, Pakistan passed a stringent new law outlawing defection of politicians to other parties in Parliament in a bid to curb political-horse trading.

The new "Anti-Defection Bill" was passed with over two thirds majority in the National Assembly in the morning of 1.7.97 after it was introduced in the House by the then Commerce Minister Mahammed Ishaq Dar in the presence of the then Prime Minister Nawaz Sherif.

The 14th constitutional Amendment to incorporate the Anti-Defection Bill had already been unanimously passed by the Senate - the Upper House of the Pakistani Parliament, in the preceding day after a brief discussion.21

The Constitution, 14th Amendment Act, which came into force on 3 July 1997, inserts Article 63 A in the Constitution. It is utterly

20. Supra f.n., 17.
undemocratic in both, the procedural and substantive provisions. A legislator who defects may be called upon by the party leader to show cause, within no more than a week, as to why he should not be disqualified from membership of the House. The leader then refers the matter to "the disciplinary committee of the party." Appeal against the decisions of this Kangaroo court lies to the leader alone "whose decision thereon shall be final". The requirement of a personal hearing to the member" by the committee is an illusory safeguard. Its composition is not defined. It can be hand-picked. The Speaker is notified of the decision, transmits it like a post-office to the Election Commission which dutifully abides by it.

The substantive provisions are as bad as the procedural one. Defection is defined to include not only defiance of the whip, but also if he "abstains from voting in the House against party policy in relation to any bill". This is neither good English nor good sense. No whip is necessary, apparently the clumsy draftsmanship testifies to the haste in which the law was drafted. This is reflected in another draconian ingredient of the offence of defection: "commits a breach of party discipline which means (sic) a violation of the party constitution, code of conduct and declared policies." Declared by whom? The leader to be sure.22

This reduces the legislator to the status of a bondsman of the party leader. No wonder Benazir Bhutto endorsed it publicly on 1st July, the day her colleague and the then leader of the opposition, Aitzaz Ehsan, criticised its provisions in the Senate as establishing the dictatorship of party leaders". What if the leadership itself is under challenge? He asked.23

22. Supra f.n., 7.
23. Ibid.
The then Prime Minister Nawaz Sharif, already locked in a battle with the Supreme Court, has sown the seeds of a dangerous confrontation. Clause (6) of Article 63A says that the court and the High Courts shall not entertain any legal proceedings, exercise any jurisdictions or make any order in relation to any action under this Article".24

The most concerning aspect of the new Bill however, according to certain quarters, was that it had been kept outside the jurisdiction of the court.

However, because of the military taking over of the power, the real effect of the new Anti-Defection law could not be tested in Pakistan.

Therefore, in the conclusion, it can be said that India's Anti-Defection Law, embodied in the Tenth Schedule to the constitution, is more liberal than Pakistan's or Sri Lanka's in that 'expulsion' from the party is no ground for disqualification of membership of the legislature.

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24. Ibid.