CHAPTER - VI

STATISTICAL AND EMPIRICAL ANALYSIS OF DEFECTION

6.1 Questionnaire

6.2 Interviews and Field Studies
CHAPTER - VI

6.0 Statistical and Empirical Analysis of Defection:

In pursuit of making this study an empirical one, the members of both the Union Parliament as well as the State legislatures are taken as target groups with the intention of knowing their perceptions to the different aspects of the Anti-Defection Law. However, when the targeted population to be covered is widely and thinly spread over a large territory, the responses from the legislators are invited through e-mailing and personally handing over the questionnaires, which was made after a careful consideration, planning and after due care with regard to phrasing of the questions, to them.

The prepared questionnaire is one of structured one and also close ended form - which are either yes/no type or multiple choice type which consists of twenty number of questions. Responses are invited from 100 legislators of Orissa Legislative Assembly and 200 members of Parliament (both from Lok Sabha and Rajya Sabha) through personal visit as well as through repeated e-mails but the rate of response is very low and ultimately only 37 numbers of responses could be received back. However, some of the responses are very good and they deserve commendation. But, before going through the statistical analysis of those responses, it is imperative to have a look at the questions itself which reads as follows.
6.1 QUESTIONNAIRE

1. Before becoming a member of the House, are you aware of the existence of the Anti-Defection Law, 1985?
   (a) Yes  (b) No  (c) No such law was in existence during that time.

2. Have you gone through the provisions of Anti-Defection Law, 1985?
   (a) Yes  (b) No  (c) Not thoroughly in detail.

3. Do you believe that the present law is comprehensive enough to check defection?
   (a) Yes  (b) No  (c) Can't Say

4. Do you believe that the Anti-Defection Law is barely required for the healthy growth of Parliamentary democracy in India?
   (a) Yes  (b) No  (c) Can't Say

5. Do you support the idea of defection on grounds of principles, personal reasons or necessities?
   (a) Yes  (b) No  (c) Can't Say
   (i) If yes on what grounds?
      (a) Principle  (b) Personal reason  (c) Necessity

6. If you support such an idea as mentioned in Q.No.5, do you believe that 'split' and 'merger' are the devices through which such ideas can be fulfilled?
   (a) Yes  (b) No  (c) Can't Say

7. If you do not support such an idea as mentioned in Q.No.5 then what could be the possible reason in allowing 'split' in a legislature party and 'merger' by the legislature party.
   (a) to promote horse trading  (b) to allow the House to enjoy its full term
8. Do you believe that 'Split' in a political party.
   (i) occurs at a particular point of time or
   (ii) is a process which takes months to complete as legislators take time to decide on the merit of such split.
   (a) Only (i) is right (b) Only (ii) is right (c) Either (i) or (ii) is right  
   (d) Neither (i) nor (ii) is right   (e) Can't Say

9. Can merger of a political party into another political party is complete if 2/3rd of the legislature party concerned merges as defined in the Anti-Defection Law.
   (a) Yes   (b) No   (c) Can't Say

10. Can the Speakers in India (both at the Centre & States) ever be impartial in deciding defection cases ?
    (a) Yes   (b) No   (c) Can't Say

11. If Ans. To Q.No.10 is Yes, do you suggest
    (i)that he should be left independently to decide the defection cases.
    (ii)a committee of experts to assist the Speaker or 
    (iii) his decision may be scrutinized within a stipulated time by another agency-say the judiciary.
    (a) Only (i)   (b) Only (ii)   (c) Only (iii)
    (d) Either of the three   (e) Non of the three    (f) can't say 
    (g) Any other reason please specify.
12. If Ans. to Q. No. - 10 is No.
   (i) can the same be left exclusively to the judiciary
   (ii) can the same be left exclusively to the election commission
   (iii) can the same be decided by a committee of experts
   (a) Only (i)  (b) Only (ii)
   (c) Only (iii)  (d) Either of the three  (e) Non of the three
   (f) Can't say  (g) Any other reason please specify.

13. Do you prefer the idea of barring judicial review of the Speakers decision as envisaged in the Anti-Defection Law.
   (a) Yes  (b) No  (c) No idea

14. Do you prefer the idea of having a hierarchy of Speakers with the Chairman of Rajya Sabha at the apex whose decision shall be binding on the Speakers of the States to avoid confusion and divergent rulings.
   (a) Yes  (b) No  (c) Can't Say

15. Are the legislators public servants and giving them at least one chance to show cause is essential before their removal, and in case they show sufficient cause can they be reinstated like a public servant and regain their membership.
   (a) Yes  (b) No  (c) Can't Say

16. Between two choices i.e.
   (i) Primacy of party on whose symbol you got elected or
   (ii) Interest of the constituency from where you got elected
Which one would you prefer most

(a) 1  (b) 2

(Please put a tick mark at the appropriate box).

17. How many political parties have you changed so far:

(a) As a party man [ ]  (b) As a Legislator [ ]

18. Please state the reasons that prompted you to move from one party to the other.

Ans :

19. Did you get any ministerial berth / other benefits after joining the new party / alliance

(a) Yes  (b) No  (c) Never changed a party

20. Your name please

Age:  

Educational Qualification:

Party Status:  

Constituency:

State :

Date :  Signature

Place :  Address:
6.1.1 Comparative Analysis of Data

After compilation of the data which are in the nature of responses received from the legislators, it is worth mentioning, to reflect some basic trends and traits of those responses.

(i) Only low profiled legislators responded. No big shots, no ministers or not a single speaker of the State legislatures or Parliament have responded back.

(ii) Those who are responded back, all of them excepting four legislators are either highly qualified or have at least completed their education upto graduation level.

(iii) Out of the total respondents, excepting two legislators, none of them had ever changed their party affiliations neither as a party worker nor as a legislator including legislators who have been continuously holding membership since 1963. Besides, out of these two legislators only one respondent got a ministerial berth whereas the other one did not get any political post either. However, six legislators had changed their party not as legislators but as party men because of local demands, vertical split in the party structures etc. but, as they claim, not because of any personal gain.

(iv) It is interesting to note that 100 percent of the respondents have stated that they are aware of the existence of the Anti-Defection Law though 38 percent of them stated that they had not gone thoroughly in detail into the provisions of the Anti-Defection Law, 1985.

(v) There are no uniformity in the responses with regard to the question as to whether the Anti-Defection Law, as it stands today, is comprehensive enough to check defections. Some about a little
less than 50 percent (47%) of the respondents have replied in the negative and 30 percent have replied in the affirmative whereas the rest could not take any stand.

(vi) Surprisingly enough over 65 percent of the respondents have stressed the need of the Anti-Defection Law whereas only 25% have replied in the negative and 10% are confused and failed to suggest any view.

(vii) With regard to question no.5,6 and 7, there are confusing responses. Though only 22 percent of respondents have supported the idea of defection on grounds of principle, personal reasons or necessity none of them have given their perceptions with regard to personal reasons or necessity indicating thereby that only on principle, defections should be permissible. However, 34 per cent have identified 'split' and 'mergers' as the devices through which defections on principles can be realised which in otherwords discourages 'individual defections'. In the same footing about 30 per cent of the respondents have supported 'split' in the legislature party and 'merger' by the legislature party to allow the House to enjoy its full term thereby avoiding frequent re-elections whereas the other 70 per cent have been equally divided against the other three options namely (a) to promote horse trading, (b) to create a climate of political confusion and (c) any other reasons like to fight for a cause or principle depending upon the prevailing political situation etc.

(viii) With regard to the most vital questions as to whether split in a political party is a one time affair or it occurs over a period of time, 40 per cent legislators have responded that it is a one time affair occurs at a particular point of time much contrary to the ruling of
many Speakers. However, about 15 per cent have said that it is a continuous process. Moreover near about 70 per cent of the respondent legislators have stated that merger of a political party into another is complete if 2/3rd of the legislature party merges (which is the normal practice but which is contrary to the Anti-Defection Law which indicates a vertical merger of both elected members and organisational office bearers). Only 17% replied in the negative.

(ix) 33 per cent of the legislators have expressed their doubts regarding the impartiality of the Speakers in India (both at the Centre and the States) in dealing with defection cases. However 40% of the respondents say 'yes' out of which 23 per cent have favoured the idea of forming a committee of experts to assist the Speaker whereas 12 per cent have suggested about scrutinization of his decisions by another agency say the judiciary but 54 per cent have preferred the idea of barring judicial review of the Speakers' decision on defection issues. However, 49 per cent of the respondents have not supported the idea of having a hierarchy of Speakers with the Chairman of Rajya Sabha at the apex whose decision would be binding on the Speakers of States to avoid confusion arising out of divergent rulings where as 32 per cent have agreed to the proposals.

(x) In response to another query at point no.15 of the questionnaire as to whether the legislators are public servants and giving them at least a chance to show cause is essential before their removal, about 66 percent of respondents have replied in the affirmative where as 30 per cents have said 'no'.

(xi) Another vital question to which 72 per cent respondent legislators have opted for is that despite being elected on the basis of their
respective party symbols, they have given primacy to the interest of their constituency from where they got elected whereas only 18 per cent have given utmost primacy to their 'party' on whose symbol they got elected.

From the above analysis, nothing concrete can emerge out because of the fact that the responses are very few and it is impossible to probe deeply into the feelings, reactions and sentiments of the respondent through questionnaire. Moreover, the responses are mostly received from a particular category of legislators who are highly qualified and who have not engaged themselves in the politics of defections. However, from a close and careful scrutiny the following observations as shown in the following diagrams through graphic representations, can be obtained.

6.1.2 General Idea of the Respondents Regarding the Anti-Defection Law
ABOUT SPLIT & MERGER

Supported Defection on Principle: 22%
Supported Split & Merger: 34%
Split whether one time affair: 40%
Split whether continuous process: 15%
Merger of only Legislature Party: 70%
Vertical merger of both Political & Legislature Party: 17%

WITH REGARD TO SETTLEMENT OF DEFECTION DISPUTES

Impartiality of the Speaker: 40%
Whether a Committee is required to assist the Speaker: 23%
Whether Judiciary to scrutinise the Speaker's action: 12%
Whether to allow Judicial review of Speaker's Ruling: 54%
Whether hierarchy of Speaker is required (No): 49%
6.2 Interviews and Field Studies:

Much of the defection politics germinates and culminates behind close doors and ultimately it come to the floor of the house for final conclusion and decisions. The floor of the house being a restricted area and as it has become highly expensive to visit Parliament and other State Assemblies and as also the ministers, Speakers and the other legislators are unapproachable, field studies and interviews are mostly conducted in an indirect way basing mostly on the information available through the fourth Estates like print and electronic media. However, I had visited twice the Parliament House, once to the Uttar Pradesh Legislative Assembly, once to the Himachal Pradesh Legislative Assembly and on many occasions to the Orissa Legislative Assembly. The then Speaker of the Lucknow Legislative Assembly Mr. Kesheri Nath Tripathy was generous in handing over to me a complete printed copy of his decision with regard to the defection of the Bahujan Samaj Party members, for which there were much controversy, but he could not give his interview because of his engagement in an important meeting. Likewise, the present Speaker of Orissa Legislative Assembly Mr. Sarat Kar was very cooperative in allowing me to the entrance of the Assembly Hall to distribute and to collect the questionnaires from the MLAs but he could not practically get time to fill up his own questionnaire copy. As those leaders and Speakers have been engaged with other important assignments, I had finally refrained myself from disturbing them and hence adopted the indirect way of ascertaining the view points of some of the prominent speakers and leaders.

After collection of the interviews of many prominent personalities and politicians of this country from the news papers, magazines and other sources with regard to their view points on Anti-Defection law, the following observations are made.
Starting from the present Prime Minister Shri A.B Vajpayee, former prime minister Vishwanath Pratap Singh to Shri Srinivas Tewary, the former speaker of the Madhya Pradesh Legislative Assembly, all have stressed the need for amending the Anti-Defection Law. But there views are broadly divided into two categories. While Shri Vajpayee and others stressed the need for a revision of the AD Law to check defection through splits and Mergers of parties and demanded that people who quit the party (on whose ticket they contested election) should resign their seats and seek a fresh mandate from the people, people like Shri Srinivas Tewary and others have suggested repealing the AD Law altogether as a first step to end political uncertainty and hung Legislative Assemblies & Parliament.

The former speaker of the Lok sabha Late Mr. G.M.C. Balyogi also hold a similar view though he did not stated specifically about the scraping of the AD Law. He said, "coalition do involve management of contradictions and harmonization of competing interests of alliance partners". While pointing about the significant experiences of coalition governments at the centre and the states, he pointed out that the constitution's 52nd Amendment putting the Anti-Defection Law in place had been enacted by a majority government. However, "after practising the Anti-Defection Law for 13 years, strong reservations are being expressed by the political leaders and jurists about it. This would mainly seem to be for the reason that the Law has not achieved its objective". he pointed out.

1. The Hindustan Times, New Delhi, dt.23.6.96.
2. The Hindustan Times, New Delhi, dt.1.8.96.
3. The Times of India, New Delhi, dt. 17.10.96.
4. The views of a particular period of the year 1996 have been taken into consideration.
5. National Hearald, New Delhi, dt.23.9.98.
The former West Bengal Assembly Speaker Mr. Hashim Abdul Halim, who also headed the committee to suggest ways to reduce conflict between the judiciary and the legislatures, held that the Anti-Defec tion Law has failed to serve its purpose but he did not agree on entrusting the power to the Judiciary to decide cases under the Law whereas the former Lok Sabha Speaker Mr. Shivraj Patil called for empowering the judiciary to dismiss MPs and MLAs. In this connection the interview given by the former Speaker Shri Patil is worth recalling.

Mr. Shivraj Patil who dealt with about two dozen cases under the anti-defection law during his five-year stint as Speaker of the Lok Sabha says the law suffers from serious defects. "We should either amend it or do away with it or amend the Constitution to achieve the same purpose", he says "It has not been realised", Mr. Patil says, "that the interpretation of this law is a complicated exercise. Although, generally constitutional matters are adjudicated by the Supreme Court or the high courts, this law requires the Speaker to interpret it".

6.2.1 "It would have been better, if anti-defection cases were decided by the judiciary. However, if they have to be decided by the presiding officers in the legislatures the decisions given by them should be treated as final."

The following interview given by Mr. Patil in 1997 is still relevant in the present context also.

Q: Why was the anti-defection law brought into existence? Has it served its purpose?

A: This law was brought into existence by the then Prime Minister Rajiv Gandhi with a view to ensuring that governments were not pulled

6. The Indian Express, New Delhi, dt.11.11.93
7. The Observer; New Delhi, dt.25.11.99.
down or formed with the help of defectors. It served the purpose for some years. Later on, loopholes were discovered by members who ingeniously used them to suit their designs.

**What are the defects it suffers from?**

There are many defects. I have mentioned them in the judgement I had delivered in 1992. The law does not define all the terms it uses. The words "split" and "defection" need more meticulous definition. It is silent on the activities of political parties outside Parliament and legislatures which are relevant in deciding the cases. The law is not clear on the procedures to be followed. The cases have to be decided on a legal basis, but they are argued on political lines. This creates a problem for the deciding authority. There are other lacunae which have become obvious in the last few years.

**If the anti-defection law is made stringent, would it not lead to giving more tyrannical powers to leaders of political parties?**

It would depend on what kind of amendments we are going to make. In the anti-defection law in Pakistan, the leaders of political parties are allowed to disqualify their members if they disobey the directions given by them. If this kind of amendment is introduced in India, the party bosses may become more powerful.

**Is it necessary that a split has to be a one-time affair or can it be a continuous process? Has this matter been decided by you or anybody else at any time?**

A split has to be a one-time affair only. This is the view I have always held. I have not given any judgement on this point. However, the matter was raised before Rabi Ray my predecessor, specifically. Mr. Ray held very correctly that a split has to be a one-time affair.
Do you agree with the general belief that while the anti-defection law deters individual defections, it promotes wholesale trading?

Originally, the provision relating to one-third number of members was not part of the anti-defection law. Some parliamentarians and jurists had objected to the law on the ground that it disallows elected members from exercising their discretion, while even ordinary voters are allowed to exercise their franchise as they liked. They were in favour of allowing some members to vote against the direction of their parties. It was decided that if a substantial number of members wanted to vote against the direction given by the party, they may be allowed to vote without disqualification.

How was the one-third norm arrived at?

The MPs thought of allowing two-thirds of the members to vote against the party's directions. The number was then reduced to one-half and then fixed at one-third members of the party. This was done to give some freedom to members to vote differently from the directions of their parties and not to attract the penal provisions of the law for voting against the whip.

At present, there are objections to this provision. They say that while wholesale defection is allowed, individual defection is not allowed. If we understand the reason behind this provision, we cannot really object to it. But if we look at the manner in which the provision is used by some political parties and persons, there is reason to feel dissatisfied. A balance needs to be struck.

What is the position of independents under the anti-defection law? Can they vote as they like or can they join any party they want to?
Independents can vote as they like but they can not join any political party. If they do they can be disqualified.

**What is the role of the Speaker under the anti-defection law? Can he decide cases on his own?**

The Speaker cannot take action suo motto against any member under the law. He decides cases when a petition is filed before him by a member. If a member defects from his party the leader of the party can exonerate him.

**Should there be any appeal against the decision given by a deciding authority?**

Originally, the law provided that the decision given by the deciding authority should not be appealable or reviewable. This portion of the law was struck down by the judiciary because it was not ratified by the requisite number of state legislatures. At present, one can appeal to the High Court or the Supreme Court against a decision given by the deciding authority. One can file a review petition also.

**There has been a controversy over whether a member can be expelled from the parliamentary party by the leader of the party. What are your views?**

I have held that the leader of a party can not expel the elected member to ensure that the required number of members is reduced to one-third or two-thirds of the total members. This kind of action is treated in legal language as a "colourable" exercise of power.8

6.2.2 Moreover, the former speaker of the Himachal Pradesh Vidhan Sabha Mr. Gulab Singh Thakur had taken the view that defections had

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8. The Times of India, New Delhi, dt.4.11.97
threatened the existence of the democratic set up and even after the 52nd Amendment, there was an inbuilt circuit in the laid down provisions by which the defections could still be carried out. He further suggested that in conformity to the principles of natural justice, there should also be a provision for an appeal against the order passed by the presiding officers.9

There are also suggested reforms by many prominent personalities during interviews given by them on different occasion. In the conclusion, it is worth placing, the suggestions given by Shri Charti Lal Goel, the former Speaker of the Delhi Legislative Assembly. It is required to:

(a) Define crucial terms like political party, split, merger, etc. to ensure that there was no scope of ambiguity;

(b) Treat expulsion and resignation of a member from a party, alike;

(c) Have a similar provisions as in the case of nominated members where he is allowed to join any party within six months without fearing disqualification - be made in the case of an independent member;

(d) Include a provision to declare the seat of a member who has left the party - on whose symbol he has been elected - vacant.

(e) Consider "Conclusive declaration made by a member before the media, either about relinquishing the membership of a party or joining another one, as sufficient proof of his defection. This factor be brought within the ambit of the Anti-Defection Law.10

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9. The Tribune, Chandigarh, dt.23.9.98
10. The Statesman; New Delhi, dt.5.7.97