CHAPTER - 1

INTRODUCTION

Democracy as aptly defined by Abraham Lincoln, "is the government of the people, by the people and for the people." The will of the people is expressed through the ballot box. The ballot determines the party which would run the Government. Election is thus a vital component in a democratic system of governance. In a democracy, emergence of political parties with different and diverse ideologies is but natural. Free and fair completion amongst political parties at the hustings for wresting power, to govern the country is indicative of a vibrant democracy. Political parties give concrete shape to divergent ideologies and are essential for success of any democracy. However, defections are matters of concern for the party system.

However, to remain in power, a party or a combination of parties must have the support of majority of the members, of the house. When no party commands majority, some parties agree to form a coalition government on the basis of a broad common programme. Sometimes, political parties even form a pre-poll alliance particularly in the era of coalition government. It is in such a situation that defection by a few members reduces the coalition government into a minority. Defection may take place on grounds of ideology and principle or otherwise. Be that as it may, defection or changing of affiliation is a political reality in a democratic polity and more so in a parliamentary polity.¹

I. DEFECTION - MEANING

The Webster’s dictionary defines defection as the act of abandoning a person, cause or doctrine to whom or to which one is bound by some tie (as of allegiance or duty). To forsake or fall away

from a cause or party especially in order to embrace another.\textsuperscript{2} However, the Oxford English Dictionary defines defection as the action of falling away from allegiance or adherence to a leader, party or cause.\textsuperscript{3} Whereas Odhem's dictionary says that defection is desertion from allegiance, or duty, reverent, apostasy.\textsuperscript{4} While Random House Dictionary defines defection as or the like.\textsuperscript{5} Thus all the meanings given in various dictionaries don't give a complete idea of what defection means. None of the definitions cover all the aspects of defection.

In military vocabulary, the term defection is used to describe desertion or running away of a soldier from duty. Running away from one's own country to another on account of strong political difference with the government or to escape some punishment is also called defection.\textsuperscript{6} Whereas American heritage Dictionary gives a slightly different meaning to defection and says that defection means to leave without consent or permission, an allegiance which one had exposed or acknowledged.\textsuperscript{7}

\textbf{i) Word net (r) 2.0: (dictionary)}

a) Withdrawing support or help despite allegiance or responsibility; abandonment of his wife and children left penniless.

b) The state of having rejected your religious beliefs or your political party or cause (often in favour or opposing beliefs or causes).

\textbf{ii) Wikipedia}

In politics, a defector is a person who gives up allegiance to one state or political entity in exchange for allegiance to another. More broadly, it involves abandoning person, cause,

\begin{itemize}
\item Odhem's Dictionary of English Language, 1984, p. 291.
\item Subhash C. Kashyap, The Politics of power, (Delhi: National, 1974) p. 44.
\item The American Heritage Dictionary of English Language 1969, p. 345.
\end{itemize}
or doctrine to whom or to which one is bound by some tie, as allegiance or duty.

II. DEFINITION OF DEFECTION

Regarding the definition of defection, S.C. Kashyap commented that there is no common agreement among politicians, scholars, political parties or official government circles about the definition of defection. There is also no consensus even on the precise term to be used to describe this process of crossing and re-crossing of floors. The term 'politics of defection' has gained currency recently, and it is now open to question whether it at all comprehends the diverse ramifications and conveys the ambit of the process intended to be described. Some of the others terms used for this process are crossing or changing of floors, carpet crossing, political turn-coalism, the politics of musical chairs, the politics of opportunism, the politics of defection, the waka jumping etc. while the Indian Political commentators characterize the Indian politics as the politics of instability', the 'politics of survival', the 'politics of confusion', the 'politics of deviation', or merely, the 'politics of transition'. But the different terms used in different context or countries do not convey appropriately the dimension of the problem, as every term touches a particular area of problem only. The different terms are used in different countries as crossing or changing of floors is used in British House of Common where the seating arrangement is such that the ruling party and the opposition members sit facing each other. When

8. Supra n, 6 at 41.
9. 'Musical Chairs' is the name given to a typical English drawing room game in which n players circulate round n 1 chairs till piano ceases. Chairs – one less than the number of players – are placed in circular order. With the beginning of music – usually piano – the play starts and the players go round and round the circle. As soon as the music stops each player tries to find a seat for himself. One who finds no seats is eliminated and one chair is also reduced. The next round starts. The process is repeated till at last only one chair and two players are left and the one who occupies the chair wins the game. The implication of applying this term to the phenomenon of defections is defection is obvious. The whole fight in the politics of defection is after all for the seats of powers, for ministerial chairs.
10. The term waka jumping is used in case of Newzealand, 'Waka' is the maori wood for conoe; The origin of the term relates to the recial identity of the defectors, almost all the party jumpers were maori; see also G.C. Malhotra, Anti-Defection Law and the commonwealth, (Lok Sabha Secretariat) New Delhi: Metropolitan Book co. Pvt. Ltd., 2005, p. 18.
we talk of floor crossing or changing the floor of the House what is meant that a legislator moves from the side of the government to the opposition side or vice versa, and carpet crossing' is relevant in the Nigerian Parliament, where there are separate carpet for the treasury and opposition benches and a person wanting to change sides has to cross the carpet.

However in India, the term defection has acquired preference over other terms though on strict construction it may not cover all situations. After large scale defection in later 1960s Lok Sabha resolution recommended formation of a Committee to prohibit floor crossing by legislators from one party to another. The term was not used then. But later the Committee came to be known as Committee on Defections. The Committee on defections defined the defector as under:-

"An elected members of a legislature who had been allotted the reserved symbol of any political party can be said to have defeated, if, after being elected as a member of either House of Parliament or of the Legislative Council or the Legislative Assembly of a State or 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 party concerned."

Unfortunately, this definition was highly restricted, discriminatory, narrow and unsatisfactory and did not make any provision for independents. Independents could join any party, even a party against whose candidate one may have won the election on an anti-party platform, without being considered defectors. Further, these definitions do not cover the whips, i.e. if a member of a party votes against his own party in the legislature; what will be his fate? Other

11. Supra n., 5 at 42.
14. Ibid.
question relating to split, merger or bulk defections also did not come under the preview of these definitions.

In 1985, Constitution (52nd Amendment) Act, added the Tenth Schedule to the Constitution which was popularly known as ‘Anti-Defection Act, 1985.’ The Act broadens the scope of the definition of defection and contains conditions of disqualification on grounds of defection. It provides that an elected member of Parliament or State legislature shall be liable to disqualification on grounds of defection if he decides to voluntarily relinquish membership of his original party or abstains from or votes in the House against the direction of such party. The acts of voting against the whip or abstention, however, will not attract the provisions of anti-defection law if these acts are condoned by party within 15 days of such happenings.\(^\text{15}\)

Disqualification on grounds of defection shall not apply in cases of ‘splits’ and ‘mergers’ of legislature parties. A ‘split’ means when a group of members consisting not less than ‘one third of total membership of legislative party either breaks away or abstains from voting against the whip issued by the party. ‘Merger’ means when ‘two third’ member of legislature party breaks away and merges with another party or functions as a separate group in the House.\(^\text{16}\) But the split provision has now been abolished.

III. DEMOCRACY AND PARTY SYSTEM

The eighteenth century hailed as the age of classicism has also given shape to the classical theory of democracy which in spite of the challenges posed by subsequent political system, continuous to prove itself to the one of the highest accomplishments of human civilization.\(^\text{17}\) With the advancement of civilization, political education and human development democracy has ripened in the form of a government.\(^\text{18}\) A democratic government is one which governs with the consent of the people, is conscious of its duties and responsibilities to

\(^{15}\) See Anti-Defection Act, 1985.
\(^{16}\) Ibid.
\(^{17}\) S.N. Sadasivan, Party and Democracy in India, (New Delhi; 1977) p. 456.
\(^{18}\) Esteves Sarto, Prospect of Indian Democracy, (New Delhi), 1979, p. 1.
the electorate and demonstrates them by being responsive to the needs opinions, calls and desires of citizens. Democracy makes a deliberate efforts to create a situation where political leaders propound their ideologies and propagate them, and offer the electorate to choose choice, however limited and unsatisfactory it may be. Democracy also ensures that there is liberty of thought and expression. Democracy is a way of life that develops and grows through free discussion, exchange of ideas, spread of information, through education, open public discussion etc. By that acceptable national consensus arrived at.\textsuperscript{19}

In the words of Lord Bryce democracy is a government in which the will of the majority of qualified people rules.\textsuperscript{20} Both etymologically and historically, the primary meaning of democracy relates to a form of government. Democracy embraces ideals of liberty and equality.\textsuperscript{21} A democracy is rule by the people where, "the people" includes all adult citizens "rule" means that public policies are determined either directly by the vote of the electorate or indirectly by officials freely elected at reasonably frequent intervals and by a process in which each voter who chooses to vote counts equally (one person, one vote) and in-which a plurality is determinative. It will be noted that this definition includes majority rule in the sense of nonminority rule, which is to say that no specified minority can rule.\textsuperscript{22}

The test of democratic government is whether it gives rights to its subjects, whether it allows freedom of thought, speech and association of its opponents. For a sound democracy there is a right to change the government if it misuses the power and works against the interests of its citizens.\textsuperscript{23} The definition of democracy given by Lincoln that democracy is 'Government of the people, by the people and for the people is a definition of pure democracy and is now considered

\begin{footnotes}
\textsuperscript{19} Id., at 3-5.
\textsuperscript{21} J. Roland Pennock, Democratic Political Theory, New Jersey, 1979, pp. 3-4.
\textsuperscript{22} Id., at 7.
\textsuperscript{23} Gupta, R.C., who Rules a Country? 1969, p. 3.
\end{footnotes}
incompatible with the size of the state. Now people are governed by their representatives. This form is called ‘Indirect Democracy.’

Certainly is impossible to identify democracy absolutely with majority decision although in most instances this might be the method of taking decisions most conducive to democracy. In examining the notion of “the people’ and the notion of ‘rule’ we have seen that in different circumstances different operational rules might be needed to reach the maximum of democracy achievable in those circumstances.

To ensure freedom, to ensure rule of law and to interpret the constitution and laws of the land an organ or body of government is necessary. Such a function in a democracy is performed by judiciary; and in order to perform such a function efficiently and well it has to be free from interference and influence of the executive, the legislature the politicians and other leaders. Democracy has never been a single party affairs in the countries of its origin. In theory and in practice, it reveals itself to be a system to be run paradoxically by an opposing partnership. No real democracy can function without a strong vigilant and vigorous opposition. It is an integral part of the democratic structure and the conscience keeper of a democratic society. An effective opposition restrains the party in power from transgressing its functional limits, constantly reminds it of its responsibility, keeps it responsive to popular demands and poses a challenge to its position by promising better performance. It is the responsibility of the opposition to inform the nation in time the defects and dangers in the official plans and policies and to mobilize public opinion to get them suitably modified. It educates public opinion on the issues facing the country and brings them before the legislature to actuate the process of discussion and debate and enforce the right of being consulted. As A. L. Lowell further supports this by saying that the constant presence of a recognized opposition is an obstacle to despotism .... the existence of

24. Id., at 7.
26. Supra n., 18 at 6; see also, Esteves Sarto, Prospects of Indian Democracy (New Delhi, Meenakshi Prakashan 1979) p. 6.
27. Supra n., 17 at 433.
a party in opposition with a programme within the limits of possible public opinion, is a bulwark against the tyranny not only of despot but also of a fanatical majority.\textsuperscript{28} The opposition in the final analysis manifests itself in the form of a political or parties. The political party, or party system provides the major connective linkage between people and government, between separate formal agencies and officials of government and between official and non–official (extra–governmental) holders of power.\textsuperscript{29}

Some people while talked about democracy, actually thought of party less democracy.\textsuperscript{30} According to this thought anyone liked by the majority of electorates shall be their representative regardless of his political affiliation. Really absolute partyless democracy has not been witnessed in the world specially in the context of formation of government. Of course, there are many other factors which necessitated the existence of political parties. What is stressed here is that parties in the democracies appear to be indispensable. Without parties the political system degenerates into a lifeless existence. National policies are to a large extent created by political parties.

However, the system of political parties in a society is in part a product of the choices of individual citizens as they work and vote for available parties. The party system is also in part the product of the organizational and strategic efforts of political leaders, as they build policy platforms, penetrate local organizations, enroll local leaders behind them, use patronage to mobilize workers and the like. The choices of citizens and the efforts of leaders are themselves responses in large measure to the constitutional opportunities and the socio economic condition in which they find themselves.\textsuperscript{31}

\begin{thebibliography}{99}
\item Avery Leiserson, 'The Place of Parties in the study of Politics', in Political parties; Contemporary Trends and Ideas edited by Roy C. Macrid, 31.
\item Jai Prakash Narayan was one of the proponent of the party less democracy. See Jai Prakash Narayan, Towards Total Revolution, 1978.
\end{thebibliography}
Modern democracies are essentially party democracies. It is inconceivable to separate democracy from political parties in own contemporary society. The democracy has been grown to such an extent in modern times that all those counties which claim or proclaim to be democratic have more than one political party. One political party is considered to be the anti-thesis of democracy. In democracies, the political parties are sometimes well established, well organized and founded on ideology and principles, sometimes growing up just like the mushrooms around a leader or group of leaders without any ideology or principle, driven by the sheer motivation of capturing or sharing political power.\[32\]

The prime objective of the political parties in all democratic countries is to capture power cannot be denied. The power once captured by the party to retain it as long as possible by whatever means and methods, they can attain it. This is the usual mode of functioning of the party democracies. But what is becoming more usual, and, therefore, distressing, is the haste with which the political parties and political groups in opposition want to capture power, with no ideology or principle involved, with no constraint, no qualms of conscience, only the mensrea of capturing political power remaining in focus how the power is to be captured is immaterial. Equally usual is the tenacity with which the party in power strives to retain power, again with the same guilty intention (mensrea) of remaining in power, and, again, with no ideology or principle involved.\[33\]

Political parties play a vital role in the system of responsible or representative government. It is not only dominant but creative and comprehensive. In furtherance of its objectives, party has emerged as a political force to make democracy workable and serves as a firm foundation of representative democracy, formulating policies and

33. Ibid.
programmes of government and implements them. It provides a stable basis for the majority principle in democracy. 34

Keeping in view the significance of party in a democracy Edmund Burke defines party as a body of men for promoting by their joint endeavors the national interest, upon some particular principle to which they are all agreed. A party often promotes its own interest under the cover of national interest. It does not invariably act in joint endeavour and its members tend to form groups and resort to infighting in various issues. 35

Oftenly we have had to draw imaginary lines to link the few shining points scattered in the dark the resultant patterns can give only a very approximate idea of reality. The development of the science of political parties (it could perhaps be called stariology) will no doubt lead to the revision of many the less some general phenomenon can be established. 36

The organization of political parties is certainly not in conformity with orthodox notions of democracy. Their internal structure is essentially autocratic and oligarchic; their leaders are not really appointed by the members in spite of appearances, but co-opted nominated by the central body, they tend to form a ruling class. Growing centralization is increasing diminishing the influence of members over leaders, while on the other hand strengthening the influence of leaders upon members. 37

The displacement of a party in power normally cannot be done either by the people or by the electorate of their own. A strong opposition party can do it by mobilising public opinion and creating dissatisfaction against the existing government. Democracy therefore is not a government of the people but party which secured the majority in the legislature. Further it is not the majority of the people or electorate

34. Supra n., 17 at 2.
35. Supra n., 17 at 6.
37. Ibid.
that extends or ends the life of a party in normal circumstances but it is the majority of the party representatives in the legislature apparently taken in the context as representatives of the people.

IV. PARTY SYSTEM AND DEFECTION

Political parties are an indispensable feature of democracy as well as modern political system in the entire world today. Modern party with its well-organization and disciplinary regulation is essentially a 20th century phenomenon. Barker was right when he points out that political parties are necessary means of democracy. Finer has aptly advocated that party has ceased to be the invisible government and has become not only visible but acknowledged government in democracy. Allan R. Ball is of the opinion that it is difficult to imagine modern political system without political parties. One party system is the essential machinery of a democratic form of governance. Partyless democracy might have been a feasible preposition in a small Greek city state but it is nothing less than a Utopia in modern democratic set-up. That is why Lowell has opined that the conception of government by the whole people in any large nation is of course a chimera, for wherever the suffrage is wide, parties are certain to exit and the control must really be in the hand of a party that compromises a majority or the people approximation to a majority or the people. The father of the nation Mahatama Gandhi, Loknayak Jai Prakash Narayan, Acharya Vinoba Bave and others are far from the world of political reality that there can be democracy without parties. Even the newly commenced constitutional Panchayati Raj Institutions in the various state of India are not free from the involvement of political parties at grassroot level of power politics.

Democratic government in concrete terms means majority government and the question of majority and minority are best settled in the presence and operation of well recognized political parties.

40. Supra n., 28.
Without political parties there can be no unified statement of principle, no orderly evolution of policy, no regular resort to the constitutional device of parliamentary election nor of course any of the recognized institution by means of which a party seek of gain or maintain power.\textsuperscript{41}

All the political scientists have emphasized the need of a political party. Political parties play a vital role in modern democratic form of a governments as well governments formed by the communistic and socialistic pattern of societies. They have a great role to play particularly in newly liberated countries of Asia, Africa and Latin America from the yoke of colonialism and imperialism.\textsuperscript{42}

‘Why do we need political parties’ is inherently attached with this question what a political party is? Edmund Burke was the first who answered this statement by defining political party as a body of man united for promoting by their joint endeavour the national interest upon some particular principle in which they are agreed. Austin Rany gives due importance to the politics by stating:

\begin{quote}
that is essentially a contest among human groups for influence over the politics of government. Political party is a kind of political or an autonomous organizational group that make nominations and contest elections in the hope of eventually getting and exercising control of the personal and policies of government.\textsuperscript{43}
\end{quote}

Father Maclver\textsuperscript{44} opines that:

\begin{quote}
‘political party is an association organized in support of some principle or policy which by constitutional means it endeavour to make the determinant of government.’
\end{quote}

Fredrich focusses on its conception:

\begin{flushright}
41. Supra n., 38, at 374.
42. Ibid.
43. Ibid.
\end{flushright}
'that a political party is a group of human beings, stably organized with objective of securing or maintaining for its leaders the control of a government and with the further objective of giving to members of the party through such control ideal and national benefits and advantage.'

Gilchrist further observes:

that a political party may be defined as an organized group of citizens who profess to share the same political view and who by acting as political prevail.

By doing that it is necessary to control the legislature in the state. To control legislature means that party representatives must be in a majority in the legislature. Therefore, political parties, are highly organized in order to manage election, the more members they can command the more control they have over the legislature.45

One of the most important function of the political parties is that of uniting, simplifying and stabilizing the political process. Bryce has beautifully said that the political parties keep a nation's mind alive as the rise and fall of the sweeping tide freshens the water of long ocean inlets.46 More or less this task of awareness is directly linked with the party that is in opposition, because they control, check and balance the parties in power. Individual views and opinion has no say in the party being controlled and directed by the norms set by each and every party. Boss at the top has to carry the executive governmental decision. That is why stiffer assets that party system is an organizational of social treason and the boss are the chief traitor.47

In political parties, the right to dissent is an absolute necessity in order to fight bossism and thus in the political process it would be unfair to equate dissent with defection. The right to dissent is well recognized in the British Labour Party and also in the Tory Party.

45. Supra n., 38 at 394-95.
46. Supra n., 20 at 134-35.
47. Supra n., 38 at 375-378.
Parties faces split and defections in Britain also from where we have borrowed many of our democratic practices.\textsuperscript{48} Defection being the natural adjunct of democracy and it is as old as the party itself. The phenomenon of defection which has started as a process of legitimate and natural polarization of social and political ideas and interests gradually twined into a method of changing political affiliation for power and at times, perhaps, for financial gains. As a result of repeated and unprincipled changes in party loyalties the democratic polity in India was put to severe strain.\textsuperscript{49}

People (People’s will and wishes) are represented through elected members of the legislative or representatives houses in a parliamentary democracy of the sort we have in India. In the process of governing the people, a representative government enjoys popular mandate and support of the majority of the members in a house. Theoretically this support need not be expected on a party basis, but in common practice such support is generally on party lines. Thus, existence of political parties for a stable majority, support to a government in a house is inevitable.\textsuperscript{50}

In modern democracies citizen’s are represented through and by political parties. Party performs the function of representing the national interests being once attributed to the sovereign and later to the parliament. This has resulted into theoretical and constitutional problems and this is one of the reasons why even the more recent constitutions avoid giving formal representation to party representation. A realistic view of the present day representational process confirms that there is a two way process: a relationship between the electors and their party, and a relationship between the party and its representatives; contention being that party nomination tends to be the real election; for while the electors choose the party, the elected are


actually chosen by the party.\textsuperscript{51} Further, Duverger seems contentful in his remarks:

\begin{quote}
\textit{".... the modern representative is entrusted with a 'double mandate', from his electors and from the party; and in practice the party mandate takes precedence over the electoral mandate."}\textsuperscript{52}
\end{quote}

Professor H.J. Laski and Sir Ivor Jennings who were the political scientists of eminence have also emphasized the significance of political parties in the business of representative house when they submit that:

\begin{quote}
\textit{"Parties are the basis upon which the organization of the house for coherency is made possible."}\textsuperscript{53}
\end{quote}

And,

\begin{quote}
\textit{"the House of Commons is not composed of individual members but political parties."}\textsuperscript{54}
\end{quote}

Thus, beyond all doubts the most important position of political parties in the affairs of representative houses, particularly lower house is clear. Also, for a representative party – bonds are perhaps for stronger than any other bonds.

Indeed, there is some truth in the contention that 'political power is like a treacherous beloved.' It is expected that politicians and representatives will remain the servants of the will of the people and the mandate on behalf of that they are elected as representatives in a democratic society. But, dissimilar to this the political masters are busy in ruining the esteemed belief just to quench their thirst of political power – their treacherous beloved. Thus, the act of 'floor crossing' or 'horse – trading' by changing loyalty or allegiance from one party to

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\textsuperscript{52} Supra n., 36 at 472.
\end{footnotes}
another by the elected representatives of the people results in a kind of havoc to representatives governments by destabilizing them or hanging as a Damocles’ sword all the time over their heads. This kind of act of representatives merely for some pecuniary including ministerial berths or even otherwise is commonly called ‘defection’ in political terminology. This immoral and irresponsible behaviour of the representative weakens the democratic fibre and governmental texture of a polity based on representatives system of democracy. There may be a justification in the contention that there is a direct relationship between a representative and the party to which he belongs and that the electors elect the party and not an individual. But, it is almost an established fact that the electors elect a party for its ideology, policy, programmes etc. not its body physique, Jennings views are worth quoting in this sense:

"A successful candidate is almost invariably returned to parliament not because of his personality nor because of his judgement and capacity, but because of his party label ... his appeal is an appeal on his party’s policy."

So, the loyalty of a representative is not to the political party as a body physique but to the policies, programmes and ideology of the party. Representative is free to change his allegiance if he differs from the ideology of a party on reasonable grounds and not for some selfish motives and gains. But such a change over should be justified and should not be just like changing clothes. Change over should be based on some logical and deep rooted reasons. But during fourth general elections bulk defections took place and representatives changed their allegiance for selfish ends making defection an evil. The idea of agreed minimum common programme for sharing power resulted in immoral and irresponsible behaviour of defection. This resulted in instability of governments multiple acts of defection, corruption and bribery by defectors and a sense of insecurity to political parties. The

55. Ibid.

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phenomenon of defection which started in the late 1960s destabilized many popularly elected governments weakening the democratic fibre of the politics in India.

To understand the problem of defection, an analysis of origin and growth of political parties and politics in India is necessary. When India became free, democracy was obvious choice, and nobody paused even for a split – second for any alternative. In fact, the entire freedom movement was an experiment in operating democracy. The Congress\textsuperscript{56} under whose banner the most freedom struggles were fought and which ultimately won independence for India was not a political party but was the entire spectrum of the national movement. It was but natural that all shades of opinions, leftist, rightist and centralist, all religions, Hindus, Muslims, Parsis, Christians, Jews, Jains, Sikhs, Buddhists, all high and low caste Hindus worked together under the congress flag with the sole objective: liberation of country from the foreign rule.\textsuperscript{57}

In this perspective, when Quit India Movement was launched, it was but natural for the Congress to proclaim that it “has no intention of gaining powers.” It was equally natural for the Congress leaders to proclaim that when power would come “it will belong to the whole of India.”\textsuperscript{58}

Once freedom was won Congress lost its ideology, but people with diverse ideologies, ideas, goals and objectives continued to crowd in it. Those who could not be accommodated or felt comfortable came out of it and formed a separate political party. Merely, it is sometimes, overlooked that the Congress not only provided the ruling party but is also the birth place of almost all the opposition parties. When first general election came, most of the opposition parties were splinter groups from the congress. Most of these opposition parties lacked ideological cohesion. Most of the opposition parties were fed by the

\textsuperscript{56} Originally, the name of the Congress was, the Indian National Congress, later on it was called just by the name of “the Congress”. It is, seldom, called as “the Congress Party” Even today, the two Congress are called “the Congress” and the Congress (I).

\textsuperscript{57} Pattabhi Sitaramayya, II History of the National Congress, 1969, pp. 343-46.

\textsuperscript{58} \textit{Ibid.}
Congress and whosoever failed to get a share in the spoils of politics, came out of Congress and formed an opposition party.\textsuperscript{59}

Not merely this, even to-day, the leadership in most of the opposition parties and the ruling parties belongs to ex-congressmen. In a sense, it seems clear that the political parties of India have no clear cut ideology, and thus, all of them subscribe to the same ideology.\textsuperscript{60} Mahatma Gandhi foresaw these developments, and in 1948 suggested that the Congress should be dissolved as a political party and should be converted into the Lok Seva Sangh, i.e., a social service organization, with the task of social regeneration and economic uplift of masses, and its members should engage in constructive work and should give up all political activity.\textsuperscript{61} As an idealistic suggestion it was as valid then as it is to-day. Probably, if this suggestion was accepted, the real political parties might have emerged in India.

But owing to this the group struggle and factionalism have started which has done considerable damage to the popular image of the party and led to the formation of splinter parties in every state. The divergent groups refer the disputes to the central leadership and the latter's pre disposition to intervene in every rift adhering to the maxim 'justice belongs to the stronger' hardly enables the local organizational level to develop democratic discipline and the sense of responsibility by taking to a line that demands self-restraint, mutual respect, purposeful discussion and the spirit of reconciliation many dissidents who were expelled from the party at the behest of the central leadership on disciplinary grounds, were men who wanted the party to live up to democratic ideals.\textsuperscript{62}

\begin{itemize}
\item \textsuperscript{59} \textit{Supra n.}, 32 at 294.
\item \textsuperscript{60} \textit{Ibid.}
\item \textsuperscript{61} In his diary, Mahatma Gandhi wrote on 21 May, 1947 the following passage: The congress has gained the trust of the people on account of its many sacrifices and penances but if at this moment it were to let the people down by becoming their over lord instead of their servant and arrogate to itself a position of master, I venture to prophesy on the strength of my experience of long years that though I may be alive or not, a revolution will sweep over the country that the people will pick out the white capped one individually and finish them and that a third power will stand to gain by this.
\item \textsuperscript{62} \textit{Supra n.}, 17 at 239.
\end{itemize}
The Fourth General Elections has been a landmark in Indian's Political history. The non-Congress parties has saved at least for some time two decades of frustration and demoralization and made them confident that political power is not beyond their reach if they adopt to the changing political conditions. As an alternative to Congress they got the opportunities to learn their limitations and realize that there is a tremendous strength in the restraints and refinements of democracy and unless they develop the discipline and sense of responsibility desired by the parliamentary system, they will not be able to achieve the goals. A new phase of coalition government started and thus begins the most ignominious period in the history of the working of the Indian democracy. Subhash C. Kashyap observes as follows:

The fourth General elections held in February 1967 constituted a watershed in the post independence political history of India. The monolithic regime of the undivided Congress and its haloed leadership had concealed both the many operational weakness and the basic inner strength and reliance of the Indian system. White strongly reaffirming the people's deep involvement in the democratic process, the electoral verdict shattered the virtual monopoly of political power by single party and underlined the inner strains and contradictions of a hotchpotch dominant party.

It also exposed the artificiality of the political stability, democratic maturity and parliamentary sophistication at which the system had appeared to be operating.

V. CAUSES OF DEFECTION

There are so many caused of Defections. The real causes for the wide-spread spectacle of defections and counter defections are often

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63. Ibid.
64. Supra n., 6 at 4.
a combination of all three. The nature of political parties is also responsible for the evil of defections.

The first and foremost is the ambition for power. The most unfortunate but hard fact of Indian political life if that politician fought and maneuvered for power and government/ministerial offices after independence. This lust for power ultimately lead to factionalism. "The political parties in India in general and Congress in particular is well known for their factional nature. Though Congress succeeded in keeping factionalism under control but after Fourth Genera Elections in 1967, due to reduced majority in the Centre and having been reduced to minority in eight states, factionalism could not be controlled. Political factions within a particular party when felt isolated from leadership often resorted to defection. Once the eldest party Congress, showed the way, the other parties followed it up. The legislator failing to obtain some office from the party he belonged to defected towards the party promising him the office. It is important that during the first one year of defection after the Fourth General Election, as many as 115 defectors were rewarded with ministerial Gaddis in non - Congress governments or in Congress - supported and Congress - governments. Also one was awarded with Speakership and several other with smaller offices like those Parliamentary Secretaries. Table 1.1 shows the relationship of defectors with Ministerial Offices while Table 1.2 shows the state-wise figures-percentage etc. of the defectors appointed ministers and shows the relation between the total number of legislators the strength of the ruling party or the coalition and the number of defectors with the number of ministership in the seven states under consideration. 

65. These states were Punjab, Uttar Pradesh, Bihar, West Bengal, Orissa, Tamil Nadu, Kerala and Rajasthan.
### Table 1.1

**RELATIONSHIP OF DEFECTORS WITH MINISTERIAL OFFICES**

<table>
<thead>
<tr>
<th></th>
<th>Cabinet Ministers</th>
<th>Speaker</th>
<th>Ministers of state</th>
<th>Deputy Ministers</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Defectors from the</td>
<td>25</td>
<td>01</td>
<td>14</td>
<td>12</td>
<td>52</td>
</tr>
<tr>
<td>Congress in non-Congress</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Governments.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Defectors from non-Congress</td>
<td>35</td>
<td>-</td>
<td>19</td>
<td>10</td>
<td>64</td>
</tr>
<tr>
<td>Parties in Congress</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>supported or</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Congress Governments.</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>60</td>
<td>01</td>
<td>33</td>
<td>22</td>
<td>116</td>
</tr>
</tbody>
</table>

### Table 1.2

**State-wise Figures of Defectors Appointed to Ministerial Offices**

<table>
<thead>
<tr>
<th>S. No</th>
<th>Name of the State</th>
<th>Strength of the Assembly</th>
<th>Strength of the Ruling Coalition or Party</th>
<th>Strength of Defectors in the ruling party coalition</th>
<th>Total No. of Ministers (including Parliamentary Secretariats)</th>
<th>No. and % of Defectors appointed Ministers</th>
<th>Whether Chief Minister a Defector</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Rajasthan</td>
<td>184</td>
<td>106</td>
<td>18</td>
<td>35</td>
<td>5(14%)</td>
<td>No</td>
</tr>
<tr>
<td>2.</td>
<td>Haryana U.F. Ministry of Rao Birendra Singh</td>
<td>81</td>
<td>40</td>
<td>29</td>
<td>23</td>
<td>22(95%)</td>
<td>Defector</td>
</tr>
<tr>
<td>3.</td>
<td>Punjab</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>(a) U.F. Ministry of Shri Gurnam Singh</td>
<td>104</td>
<td>53</td>
<td>7</td>
<td>17</td>
<td>6(35%)</td>
<td>Defector</td>
</tr>
<tr>
<td></td>
<td>(b) Congress Supported Gill Ministry</td>
<td>104</td>
<td>59</td>
<td>18</td>
<td>16</td>
<td>16(100%)</td>
<td>Defector</td>
</tr>
<tr>
<td>4.</td>
<td>Bihar</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>(a) U.F. Ministry of Shri M.P. Sinha</td>
<td>318</td>
<td>164</td>
<td>12</td>
<td>34</td>
<td>5(117%)</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>(b) Congress supported Manal Ministry</td>
<td>318</td>
<td>162</td>
<td>38</td>
<td>38</td>
<td>38 (100%)</td>
<td>Defector</td>
</tr>
<tr>
<td></td>
<td>(c) U.F. Ministry of Shri Paswan</td>
<td>318</td>
<td>175</td>
<td>51</td>
<td>13</td>
<td>7(53%)</td>
<td>Defector</td>
</tr>
<tr>
<td>5.</td>
<td>Madhya Pradesh U.F. Ministry of Shri G.N. Singh</td>
<td>296</td>
<td>165</td>
<td>36</td>
<td>34</td>
<td>21 (62%)</td>
<td>Defector</td>
</tr>
<tr>
<td>6.</td>
<td>Uttar Pradesh U.F. Ministry of Shri Charan Singh</td>
<td>425</td>
<td>227</td>
<td>17</td>
<td>28</td>
<td>7 (25%)</td>
<td>Defector</td>
</tr>
<tr>
<td>7.</td>
<td>West Bengal Congress supported Ghosh Ministry</td>
<td>280</td>
<td>144</td>
<td>17</td>
<td>11</td>
<td>11 (100%)</td>
<td>Defector</td>
</tr>
</tbody>
</table>

Table 1.3
Size of the Union Council of Ministers – 1947-1968

<table>
<thead>
<tr>
<th>Year</th>
<th>Cabinet Ministers</th>
<th>Ministers of State</th>
<th>Deputy Ministers</th>
<th>Parliamentary Secretaries</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>14</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>14</td>
</tr>
<tr>
<td>1948</td>
<td>14</td>
<td>3</td>
<td>3</td>
<td>-</td>
<td>20</td>
</tr>
<tr>
<td>1949</td>
<td>14</td>
<td>4</td>
<td>2</td>
<td>-</td>
<td>20</td>
</tr>
<tr>
<td>1950</td>
<td>15</td>
<td>5</td>
<td>2</td>
<td>-</td>
<td>22</td>
</tr>
<tr>
<td>1951</td>
<td>12</td>
<td>7</td>
<td>6</td>
<td>2</td>
<td>27</td>
</tr>
<tr>
<td>1952</td>
<td>15</td>
<td>6</td>
<td>15</td>
<td>4</td>
<td>40</td>
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<tr>
<td>1953</td>
<td>14</td>
<td>6</td>
<td>15</td>
<td>4</td>
<td>39</td>
</tr>
<tr>
<td>1954</td>
<td>14</td>
<td>11</td>
<td>14</td>
<td>9</td>
<td>48</td>
</tr>
<tr>
<td>1955</td>
<td>15</td>
<td>13</td>
<td>13</td>
<td>8</td>
<td>49</td>
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<tr>
<td>1956</td>
<td>15</td>
<td>17</td>
<td>14</td>
<td>6</td>
<td>52</td>
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<tr>
<td>1957</td>
<td>13</td>
<td>14</td>
<td>14</td>
<td>5</td>
<td>46</td>
</tr>
<tr>
<td>1958</td>
<td>13</td>
<td>14</td>
<td>19</td>
<td>8</td>
<td>54</td>
</tr>
<tr>
<td>1959</td>
<td>13</td>
<td>14</td>
<td>20</td>
<td>8</td>
<td>55</td>
</tr>
<tr>
<td>1960</td>
<td>13</td>
<td>14</td>
<td>21</td>
<td>6</td>
<td>54</td>
</tr>
<tr>
<td>1961</td>
<td>12</td>
<td>14</td>
<td>21</td>
<td>6</td>
<td>53</td>
</tr>
<tr>
<td>1962</td>
<td>18</td>
<td>12</td>
<td>23</td>
<td>6</td>
<td>59</td>
</tr>
<tr>
<td>1963</td>
<td>18</td>
<td>12</td>
<td>22</td>
<td>6</td>
<td>58</td>
</tr>
<tr>
<td>1964</td>
<td>15</td>
<td>15</td>
<td>20</td>
<td>-</td>
<td>50</td>
</tr>
<tr>
<td>1965</td>
<td>15</td>
<td>16</td>
<td>22</td>
<td>6</td>
<td>59</td>
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<tr>
<td>1966</td>
<td>16</td>
<td>18</td>
<td>19</td>
<td>4</td>
<td>57</td>
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<tr>
<td>1967</td>
<td>19</td>
<td>17</td>
<td>16</td>
<td>-</td>
<td>51</td>
</tr>
<tr>
<td>1968</td>
<td>18</td>
<td>17</td>
<td>19</td>
<td>-</td>
<td>54</td>
</tr>
</tbody>
</table>

Source: Subhash C. Kashyap, Id.

Fluctuating Size of the Union Cabinet during the last 21 years 1947 - 1968

The second factor is the difference between the emoluments, status and benefits attached to the office of a minister and that of an ordinary legislator. This lust for money and status have motivated defections to a great extent, Member of Legislative Assembly defecting to become a minister and Minister defecting to become a Chief Minister. P.C. Ghosh in West Bengal in 1967, Lachman Singh Gill in Punjab and B.P. Mandal in Bihar in 1968 were the senior ministers who defected in order to become Chief Ministers.68 This trend continues till today, particularly independent legislators charge heavy price from the party he joins.

Thirdly, there have been cases when legislators lost faith in the policies and programmes of the party to which they belonged and crossed the floor to other party whose ideology they liked. These cases are democratic and genuine but rare. Lack of stout and dynamic leadership, indifference of the electorate to acts of defection by their representatives are the other factors. With no fear of losing the support of electors, the legislators indulge in the process of defections repeatedly.69

Fourthly, most of the politicians and political parties in India have no political ideology and constitutional morality. They want to come into power by hook or crook. With this object in view, the rightists and leftists, the secularists and communalists, the progressive and the conservatives combined and openly invited defections from the party in power by offering ministerial offices in advance.70

To be brief, the causes of defection can be enumerated as under:-

i) Change in political ideology causes defection (Change of party);
ii) Monetary consideration is a dominate cause for defection;
iii) Temptations of power also is a cause for defection;
iv) Offer of posts is an important cause for defection;
v) Caste factor is dominant in defection;
vi) Protection from facing court cases or enquiries against opponent causes defection;
Vii) Corruption also is a big cause for defection;
viii) When a person becomes dominant in a party, the other members defect to oppose the leader’s domination;
ix) Defectors fell prey to pressures of several pressure groups.
x) When political party becomes weak or allow opportunities, these are major causes of defection.

Due to all these causes mentioned above defections became frequent and uncontrollable. All parties condemning defections

69. Supra n., 66 at 81-82.
70. Supra n., 13.
indulged themselves in the process later. Defecting legislature try to justify the process of defection by distinguishing between defection on ideological difference and defections for monetary benefits and selfish ends identifying themselves with the former, being based on differences in principles, policies and programmes.

Secondly bulk defections are justified and distinguished from individual defections. A change of party loyalty by a group could not be treated in the same way as similar action by an individual which was being expressed by the Chairman of the Committee on Defections in 1969. Members of a party are entitled to leave if the party deviates from the programme contemplated by it at the time of general election.\textsuperscript{71} So bulk defections may be justified on the plea that if freedom to move from one party to another is restricted, it may lead to greater evils like authoritarianism of party leadership.

Anti-Defection Act also justifies a spilt in a party, if one third of the members of a party change their allegiance and leave the parent party, Anti – Defection Act does not apply.\textsuperscript{72} Further there is no clear cut law for the defection by independents.

Legislators defecting due to ideological differences, bad politics of a party and for the betterment of people in the society may be justified. Such defections may represent change and progress. But the situation is quite different at present. It was commented by S.C. Kashyap.

Politicians today in whichever party they may be - are bound together not so much by affinity of ideals as by a common hope of sharing political power and enjoying other more mundane personal benefits. In as much as parties are merely means of fighting elections and getting to position of power, changing a party is like changing one’s campaign manager and little more.\textsuperscript{73}

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\textsuperscript{71} \textit{Supra} n., 13.
\textsuperscript{72} See Anti-Defection Act, 1985.
\textsuperscript{73} \textit{Supra} n., 6 at 84.
But looking at the problem from the angle of the legislator, it is certain that legislator is also a human being having same hopes, fears and ambitions. In this context Andrew Oliver once said:

"Politicians is the most hazardous of all professions. There is not another in which a man can hope to do so much good to his fellow creatures; neither is there any in which he may so easily lose his own soul, nor is there another in which veracity is so difficult. Danger is the inseparable companion of office with all the temptation and degradations that beset it, politics is still the noblest career that any man can choose."^74

So politicians' job hardly permits him to be all scruples all the time. Many times moral values have to be compromised with the needs of success; for failure in politics is inexcusable. Defection from one's party is only an example of such a compromise.

VI. NEED TO CURB DEFECTIONS

Defectors are viewed as undesirable because they create government instability. There is however a far more compelling reason for deterring political defection- that the evil of defections undermines the very foundations of our democracy in as much as it constitutes a fraud on the voter. The keynote of a democracy is political sovereignty and it is this concept that the defectors render insignificant. The composition of Parliament ultimately reflects the popular will since voters choose candidates chiefly on the basis of their party affiliations. Changing party allegiances after elections lack popular legitimacy and it is for this important reason that defections must be curbed. The fact that defections are the medium by which governments are toppled and instability is created is another ground for prohibiting defections.

Defections affect the political system in many ways. These lead to instability in the governments, they may result in the fall of

Governments. Consequently resulting in frequent elections. As a lot of money is spent during election, unnecessary financial burden is put on the country. In India where majority of people are below poverty line, this unwanted expenditure hinders the economic development of the country.

Secondly, people loose faith in the politicians particularly defectors and start doubting their integrity. It may happen - that a candidate winning from one party by defeating his rival from another party, defect to the rival party against which, he won earlier, general public might have selected him from particular party. Keeping in view the ideology, manifesto and some other considerations of that particular party. Getting elected from such a party and consequently defecting to another party, is nothing but fraud with the electors. In this manner people may loose confidence in parliamentary democracy it becomes necessary to curb defections.

VII. RATIONALE BEHIND THE ANTI-DEFECITION LAW IN INDIA

The rationale behind enacting the Anti - Defection Law, providing for punitive measures against a member who defects from one party to another after election, is that it is aimed at ensuring stability especially in a parliamentary form of government. The law on defection seek to provide safety measures to protect both the Government and the opposition from instability arising out of shifts of party allegiance.

The members are elected to the Parliament and the State Legislature with substantial support and help from their parties and on the basis of their party manifesto. Constituents cast their votes in favour of contesting candidates not only keeping in their mind their personal qualities but also the policies and programmes of their parties. Therefore, it is supposed that a successful candidate is bound by promises made by his party during electioneering. It is expected to remain loyal to his party and abide by the party discipline. If he chooses to leave the party, he must lose his membership too.
Despite the dominant position of political parties this fact can't be denied that the elected representatives generally reflect the views of the people who have elected them. But in actual practice these elected representatives just for their personal gains and selfish ends do not hesitate in changing their loyalty or allegiance from the political party that elected them to the other political party. This unholy practice in political parlance is often called floor crossing, carpet crossing, defection, political turn coalism or horse trading etc. This selfish and irresponsible behaviour of the elected representatives is basically against the concept of democracy itself.

Frequent defections have threatened our democratic system and to check this evil, Anti – Defection Act, 1985 was enacted by the Parliament. This evil of defection is continuous even after the enactment of the law, raising some new legal issues often creating constitutional crisis. Y.B. Chavan, the Chairman of the Committee on defections and the Ministers declared that “Defections are a national malady which is eating into democracy.”\(^{75}\)

In view of the above, the Anti - Defection law should be an essential in such a system to ensure that the results of the election does not adversely affects members who gained their seats in legislatures. Therefore, this study has been taken up as it becomes essential to analyze the entire political process of defections.

**VIII. REVIEW OF LITERATURE**

The Review of allied literatures as well as previous research work is of paramount importance in research endeavour. Under this review of related literature, an attempt has been made to review literatures available so as to draw some meaningful guidelines for the present research work.

The present study attempts to understand and analyse the post Fourth General Elections political scene in the States. It covers the period roughly from February 1967 to March 1969 and takes into its

\(^{75}\) *Supra n.*, at 13.
ambit seven States – Rajasthan, Haryana, Punjab, Bihar, Uttar Pradesh, Madhya Pradesh and West Bengal. These states have been in the spotlight in the context of the phenomenon of frequent changes of party affiliations by legislatures in large numbers affecting the fate of government and the course of politics. For want of a more precise term to describe this somewhat unique pattern of political behavior the author has titled the study, “The politics of Defection”. The problem has several psychological and socio-economic dimensions and is closely related to the dynamics of human relations and Leadership Process.76

One cannot deny the politics of defection in India, is perhaps a part of the process of growth and adjustment, a consequence of the emergence of a new elites and as aspect of the inevitable frustration of an incoherent multiparty system. The political scene after 1969 was moving fast and to fulfill the demand of the public at large, it is necessary to bring out the present study.77

The most significant development in the post Fourth General Election period were the formation of many coalition Government of widely heterogeneous elements and the continuous process of changing party affiliations by legislators in large numbers, thereby affecting the fate of Ministries and the course of politics, Newer and newer combination of groups and parties came into being in many cases ‘operation alliance’ and ‘operation topple’ continued side by side. During 1967 to 1973 some 45 State Governments were toppled in quick succession with as many as over 2700 cases of defection by Legislators over 60 percent Legislators all over the country were involved in the game – many of them changing their party affiliation more than once and some of them as many as four or five times within a year. The climax reached really not during 1967-1970 but soon after 1971 elections to the Lok Sabha.

The cases of defection during the 1971-73 period have been much longer than those during the entire 1967-71. The defection has become so routinized that the most part of our country's political culture insensitized to their occurrence. After 1974 the defection game becomes a two way traffic in many States election.

However, the author analyses the historical background of defection politics with reference to precedents and practices in India and abroad and also highlights the main causes behind defecting from his party which are historical, institutional, political, socio-economic and motivational one. The author also examines the various remedies suggested by the Chavan Committee Report and by others for resolving the problem of defection.78

After taking into consideration, the Chavan's Committee Report, the draft prepared by the committee, put-forth before the Parliament as Thirty-Second Constitutional Amendment but due to the dissolution of Lok Sabha it could not be passed by the Parliament. After that, Forty-eighth Constitutional Amendment brought in the Parliament but it also could not be passed. Ultimately the 52nd Constitutional Amendment which is popularly known as Anti-Defection Law was passed by the Parliament on the last two days of January, 1985 and received the Presidents assent on February 15, 1985. The then Prime Minister of India Shri Rajiv Gandhi said in the Parliament while discussion on the Bill that there are so many flaws in the Law.79

While the author Subhash C. Kashyap80 in his book entitled as 'Anti Defection Law and Parliamentary Privileges 'offer an incisive analysis and interpretation of the Anti-Defection Law and a critical commentary on its provisions. The Law has been discussed widely in fora and still remains extremely controversial, ill-defined and amenable to varying interpretation. The interpretation of the present Law came into operation when the Parliamentarians and Legislators started to cross the floor. The first such example came before the Punjab and

78 Ibid.
Haryana High Court in Prakash Singh Badal’s case\textsuperscript{81} followed by Kihota Hollohon\textsuperscript{82} and split in Janata Dal.\textsuperscript{83} The author remains a vehement advocate of the need for changing the law and the rules substantially to meet its objectives.\textsuperscript{84}

Whereas, the author further examines the question of the role of ‘Whip’ in the context of Anti-Defection Law and the Law of Parliamentary Privileges under which the members enjoy the right to express themselves in the Houses of Legislators. The Parliamentarian and Legislators should not be careful of the proper reading of the bill but careful about the whip. The author also attempts to bring forward the commentary on the anti-defection law clause by clause and para by para i.e. articles 102(2) and 191(2) and the Tenth Schedule.\textsuperscript{85}

However, the Tenth Schedule which is popularly known as Anti-Defection Law has many defects in the Law. While analyzing the present Law there are so many terms which has not been defined under the law-in-hand, viz. political party, defections etc. The Speaker under the law has in the pivotal position because upon him the duty has been cast upon to decide the member’s disqualifications. Whereas Para 7 of the Tenth Schedule was unconstitutional and invalid as observed by the Hon’ble Supreme Court and by the various High Courts. While under para 5 of the Tenth Schedule Speaker/Deputy Speaker or Chairman/Dy. Chairman exempted if they voluntarily give up the membership of that political party to which they belong or if they join other political party after they cease to such office.\textsuperscript{86}

However, the term ‘defection’ has not been defined under the Tenth Schedule but there are authors who defines the term as ‘renouncing of allegiance or association with the party or whose ticket he has won the election. The Parliamentarian/Legislator give up their membership of the political party to which they belong on the ground of

\textsuperscript{81} Prakash Singh Badal v. Union of India, AIR 1987, P & H, 263.
\textsuperscript{82} Kihota Hollohon v. Zachillu & Others.
\textsuperscript{83} Janata Split Case.
\textsuperscript{84} Supra n. 80.
\textsuperscript{85} Ibid.
\textsuperscript{86} P. Chakraborty, Law of Disqualification and Anti-Defection (Relating to Election), (2004).
ambition for power, emoluments differences between the Ministers and the Ordinary Legislator, and lack of dynamic leadership within the parties etc.\footnote{D.C. Gupta, Indian Government and Politics, (1973).}

Whereas Saurabh Malhotra\footnote{Saurabh Malhotra, Failure of Anti-Defection Law, Central Indian Law Quarterly, Vol. XIII, Oct-Dec., 2000.} in an article published in Central Indian Law quarterly questions, the constitutionality of the law on the grounds of defection, exemption of splits and merger of groups, decision by Presiding Officers on the question relating to disqualification and Bar on judicial review. He throws light on one of the major grey area in the $10^{th}$ Schedule is that the single member split from the party is considered to be a ground for disqualification while splits of groups in the Houses are not mentioned as grounds for disqualification. He further opines that President in consultation with Election Commission has the authority to disqualify the Member, but the Tenth Schedule gave the power to the Speaker or the Presiding Officer for that matter absolutely.

Phul Chand and S. Rangaswami\footnote{Phul Chand and S. Rangaswami, The Anti-Defection Law: The Constitution (Fifty Second Amendment) Act, 1985, Journal of Constitutional and Parliamentary Studies, No. 21, Jan-June, 1987.} criticizes the provisions of the Act and opines that any law which provides for 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. It is violative of their rights to freedom of speech, expression and association guaranteed under articles 19, 105 and 194 of the Constitution. He further adds to the criticism that while a nominated member who joins a political party within six months from the date of taking his seat in the House is saved from disqualifications, no such concession is available to independents. One of the provisions which have come in for special criticism is the provision regarding ouster of jurisdiction of the courts in matters of disqualification of members.
The study undertaken by G.C. Malhotra\textsuperscript{90} shows that the Anti-Defection Law in India has been in operation since 1985. Even after Governments have fallen in some states due to defection viz. Goa in 1989 in Sikkim in 1994, and in Arunachal Pradesh in 1999 and in 2003. The study also highlights several cases of members disqualification under the Tenth Schedule in Lok Sabha and Rajya Sabha. The study on the whole gives an insight into the manner in which various countries have sought to address the issues relating to political defections. He also gives an account of some of the lacunae noticed in the Law and the recommendations to tackle such deficiencies made by the Election Commission of India, the National Commission to Review the Constitution etc.

IX. STATEMENT OF RESEARCH PROBLEM

Despite the dominant position of political parties this fact cannot be denied that the elected representatives generally reflected the views of the people who have elected them. But in actual practice these elected representatives sometimes just for their personal gains and selfish ends do not hesitate in changing their loyalty or allegiance from the political party that elected them to the other political party. This unholy practice in political parlance is often called floor crossing, carpet-crossing, political turn-coalition or horse trading etc. This selfish and irresponsible behavior of the elected representatives is basically against the concept of democracy itself.

Frequent defections have threatened our democratic system and to check this evil, Anti-Defection Act, 1985 well as (Ninety First Amendment) Bill, 2003 was enacted by the Parliament. This evil of defection is continuous even after the enactment of the law, raising some new legal issues often creating Constitutional crisis. There are some lacunae and shortcomings in the law which were raised on the floor of the Houses of Parliament, in the media and in scholarly writings by the experts on the following points:

\textsuperscript{90} G.C. Malhotra, Anti Defection Law in India and the Commonwealth, (2005).
Paragraph 2(l)(a) of the Tenth Schedule provides that if a member voluntarily gives up the membership of his political party, he shall be disqualified for being a member of the House. But the expression, 'voluntarily giving up the membership of the political party' has not been defined in the Tenth Schedule. Besides this, the term 'political party' and 'defection' has also not been defined under the Tenth Schedule of the Constitution though these terms have been repeatedly used in the Tenth Schedule.

The Tenth Schedule is an assault on the freedom of legislators to speak and vote in the House.

Though the Anti-Defection Law was made with utmost speed, it has no provision for speedy adjudication of questions of disqualification on ground of defection despite the intent of the Parliament to vest the Presiding Officers with the powers of adjudication of question under the law was to have speedier decisions. Both the Houses of Parliament as well as State Legislators have failed to apply their minds to the question of incorporating the time frame for decision making by the chairmen and the speakers of the Legislative Bodies disqualification proceedings against the member lapsed with the dissolution of the Lower House/Legislative Assemblies.

The Tenth Schedule being silent on the aspect of expulsion of members from their political parties. If makes no provision to cope with the situation arising out of expulsion of a member from his political party and the status of an expelled member in the Legislature bodies.

The right to petition under the Tenth Schedule is confined only to members of the respective House. A citizen has no right to initiate a petition for disqualification on ground of defection against his own representative in the House. Even the Speaker cannot act suo motu while declaring a member disqualified on the ground of defection. He is not to act until the petition is presented to him by any member.
(6) The biggest mistake parliament has made by empowering the Chairmen/Speakers of the Legislative Bodies to adjudicate upon the question of disqualification under the Tenth Schedule.

(7) The involvement of the Committee of Privileges in decision making under the Tenth Schedule is wrong.

Therefore, this study has been taken up as it becomes essential to analyze the entire process of political defections:

X. RESEARCH QUESTIONS

The following questions emerge from the chosen problem:

(1) Whether the terms, ‘voluntarily given up the membership of his political party’, ‘political party’, or ‘defection’, needed to define under the schedule?

(2) Whether the Tenth Schedule has not curtailed the right of the Legislators/Parliamentarian to speak and vote in the House as per their conscious and thereby violating the right of the Legislators to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution?

(3) Whether the Parliament has failed to decide the question of disqualification of a member from the House within a stipulated time period?

(4) Whether the present law is silent on the status of expelled/nominated members?

(5) Whether the right to petition under Tenth Schedule for disqualification of a member from the House, is confined to members of the respective House or to any citizen of the country?

(6) Whether the President and Governor should disqualify MPs and MLAs respectively for defection, at the recommendation of the Election Commission?

(7) Whether the Constitutional amendment should ensure that a party which joins coalition on the basis of a Common-Minimum Programme should be required to seek a fresh mandate, if it
attempts mid-term alignment and thereby barring mid-stream alignment of parties in a coalition?

(8) Whether the Anti-Defection Law robbed the politics of its dynamism?

XI. HYPOTHESES

Hypothesis is a preposition which can be put to test to determine its validity. The result of the present study would be tested on the basis of hypothesis raised by the researcher. The researcher from the given problem have drawn out the hypotheses as follows:

(1) The terms, ‘voluntarily given up membership of his political party’, ‘political party’, or ‘defection’ needed to define under the law in hand.

(2) The Tenth Schedule has curtailed the right of the Legislators to freedom of Speech and expression guaranteed under Article 19(1)(a) of the Constitution and vitiated the provision under Article 105 and 194 of the Constitution i.e. Parliamentary Privileges.

(3) Parliament has failed to decide the petition for disqualification within stipulated time period.

(4) The present Law is silent on the status of expelled/nominated members.

(5) The right to petition under the Tenth Schedule is being confined to the member of the respective House only.

(6) The President and Governor can disqualify MPs and MLAs for defection on the recommendations of Election Commission.

(7) The Constitutional amendment may ensure that a party which joins a coalition on the basis of a common Minimum Programme must seek a fresh mandate if it attempts to mid-term re-alignment thereby barring mid-stream alignment of parties in a coalition.

(8) The Anti-Defection Law robbed the politics of its dynamism.
XII. OBJECTIVES OF THE STUDY

Every study has its objectives which are based on certain hypothesis. The present study aims to undertake the following objectives:

1) To study the concept, causes and evolution of defection in India.
2) To study politico-legal dimensions of defection law in India.
3) To analyse the Report of Committee on Defections and Constitutional Amendments.
4) To study the provisions of Anti-Defection Act, 1985 and thereby draw out the critical analysis thereof of the Law.
5) To study the comparative analysis of laws relating to defection in India and some other countries of the Commonwealth.
6) To study the role/position of the Speaker/Presiding Officer under the Tenth Schedule and thereby analyzing the cases decided by the Speakers/Presiding Officers.
7) To study the response of the judiciary by analyzing the judicial pronouncement on the chosen problem.
8) At last to draw conclusion and suggest a model legal framework to curb the problem of defection in India.

XIII. RESEARCH METHODOLOGY

The present study under hand is doctrinal in nature and based on documentary and analytical methods. The researcher has used multi-pronged approach to collect as much relevant information as possible through different sources. The study is purely exploratory and evaluative in nature. Regarding the Primary sources, the relevant data has been collected from the Statutes, Files, Reports, Judicial decisions, Decisions in defection cases given by the Speakers/Chairman of Legislative Bodies in India, Lok Sabha and Rajya Sabha Debates and discussions. As regard the Secondary Sources, the data/information have been collected from the Books, Journals, Articles, Newspapers, Magazines, Internets and the Reports and Proceedings of the various Seminars/Conferences of Presiding
Officers of Legislative Bodies in India. The provisions of all the statutes relating to this is being thoroughly examined and the efforts have been made to find out the grey areas in its actual working.

XIV. SCOPE OF THE STUDY

Since the present study is not based on empirical experience, the researcher has selected India as a whole for the present study while some countries of the Commonwealth has been undertaken under the study for comparative analysis of the Law. The main focus of the present research would be on the theoretical aspect which has been analyzed on the basis of a material to be collected from different sources which shall mainly include Constituent Assembly Debates, Debates of Lok Sabha and Rajya Sabha, Reports of Law Commission's etc. The researcher has endeavoured to analyse the growing content of Anti-Defection/Split among the political parties in the changed political, social and economic context. The researcher has analyzed the Anti-Defection Act, 1985, which deals with Anti-Defection Law. Besides this, the researcher has critically analyzed the recent case laws decided by Speaker and by different Courts. The fast developing lust among the politicians to become rich by overnight have threatened the very concept of Anti-Defection Act.

XV. SCHEME OF THE STUDY

The present study entitled 'A Critical Review of Anti-Defection Law and Judicial Interpretation' has been divided into the following Eight Chapters:

Chapter 1 is devoted to general introduction of the concept of Defection. It gives an insight into the subject. The Meaning of Defection, Causes of Defection, Democracy, Party System, Review of Literature, Objectives, Hypotheses, Methodological approach and Universe of the Study are also spell out in this Chapter.

Chapter 2 of the study is devoted to Historical Development of Political Defections especially in Pre and Post-independence period in
India upto the enactment of the law especially in the States viz. Haryana, Uttar Pradesh, Bihar, Punjab, Madhya Pradesh, West Bengal, Rajasthan etc. The present chapter also throws a light on the cases of defection even after the enactment of the law through tables, graphs etc.

Chapter 3 of the study, attempts to curb defection through Law. It includes the Report of the Committee on Defections, Constitutional Amendments, Election Commission's Recommendations and the Provision contained in the Tenth Schedule of the Constitution i.e. Anti-Defection Act, 1985. Parliamentary debates during the passage of this Bill have also been discussed. An attempt has been made to interpret the text of the Act.

Chapter 4 is devoted to critical analysis of the present law i.e. the Anti-Defection Act, 1985.

Chapter 5 deals with the comparative study of the problem of political defection in India and the Commonwealth countries which having or having not the law and experience of the defection. In the present chapter provision wise comparison has been undertaken with respect to the Commonwealth countries.

Chapter 6 is devoted to define the Role/Position of the Speaker under the Tenth Schedule of the Constitution upon whom the duty has been cast under para 6(1) of the Tenth Schedule to decide the members qualification or to disqualify a member of a related House.

Chapter 7 gives an account of the judicial response and evaluates the working of the Anti-Defection Act, cases decided by various High Courts and Supreme Court have been recorded in the present chapter and interpreted according to law.

The last chapter concludes the study with a summary of discussion and tries to make some concrete suggestions for the effective working of the Anti-Defection Law.