INTRODUCTION:

(A) Defection in other democracies:-

In a plain language defection simply means switching over one's loyalty from one political party to another Political Party. There may be for valid reasons or otherwise. This tendency has been globalised in the recent times.

Defections have not been something new to the working of Indian democracy. The defections have taken place in other democracies too¹. Some people think that defections have not taken place in the United Kingdom and other democratic countries, and even if they have taken place they have all been principled defections, based on sound ideology or principles. This is far from being true.

British Democracy

Even in the United Kingdom there have been quite a few unprincipled defections². In a sense, these are integral part of parliamentary democracy. For example, one of great names in parliamentary democracies, William Gladstone, was elected on the

1. Duverger, Maurice Party Politics and Pressure Groups (1972), P.5; also see Diwan, Paras, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21 JILI 291; Also see Sharma, Mool Chand, 'Politics of Defections and Democracy' (1979) 13 J.C.P.S. 328.

conservative party ticket but he defected to Peel's Second Ministry (1841-46) of the Liberal party. He was made Vice President of the Board of Trade and later on appointed Secretary of State for Colonies. The other great names of defectors are: Joseph Chamberlain who was a great opponent of the Irish Home Rule, he crossed floor along with ninety three MPs from the Ministry of Gladstone. Winston Churchill also defected from the Conservative party to the Liberal party in the year 1904. In 1931, even the first Labour Prime Minister, Ramsay Mac Donald, had defected and consented to form a national Government in 1931.

ii) **Australian Democracy**

Australian states presented more or less the same phenomenon of defection— a near parallel to our situation. Rather in Australia the party system has been a loose one. No real ideological polarization has developed in that country. Legislators have not hesitated to shift their loyalties from a premier to an opposition leader or Vice Versa, with the result that the governments have been formed and toppled in quick

---

1. ibid; also see Diwan, Paras, 'Aya Ram Gaya Ram: The Politics of Defection' (1979) 21 JILI 291; Sharma, Mool Chand, Politics of Defections and Democracy.' (1979) 13 JCPS 328; Dhankhar, Jagdeep. 'How to combat the Virus of defections'. The Hindustan Times, New Delhi, Monday January 30,1995,P.12.

succession. In South Australia, for example, there were as many as 42 governments during the period of 1856 to 1901.

Australian politics is described as a two and a half party system - the Country party forming the half. In Britain, the function of the parties is, at least in theory, to lay down the broad framework of policy and to provide suitable machinery for recruiting members of the Ministry. Once a Ministry is formed, the function of party becomes subordinate, and the government is expected to behave with 'prudence' which 'Burke' regarded as the mark of statesmanship. In Australian political system, the function of a party is rather to supply a convenient method by which the organs of government may be made to work in the interests of the 'syndicates' linked with the party.

---

3. ibid. P. 1-17, 36-37, 94-95 and 185-186; also see Kashyap, Subhash C; 'The Politics of Power' (1974): From time to time, fierce battles have been fought between the dominant dissident Labour factions some of the bitterest campaigns have been fought between candidates who originally belonged to the same party. Federal government have been toppled due to defections in 1916, 1929, 1931 and 1941. At the State level as many as nine governments - one in New South Wales (1916), four in Victoria (1927, 1932, 1952 and 1955), one in Queensland (1957), two in South Australia (1916 and 1933) and one in Western Australia (1916) have been overthrown and reconstituted due to intra party factions and resultant defections; Also see Encel. S. Cabinet Government in Australia, Melbourne (1962).

system. The ability of the cabinet institution to survive, under these circumstances has been due to the relative absence of acute social tensions. In the process of accommodation to a different context, there have evolved certain norms of behaviour and certain institutional devices that provide the framework within which any Australian cabinet must operate. It is these that constitute the novel and distinctive features of cabinet government in Australia; as far as the processes of political and administrative control are concerned, Australian governments have largely been content to go on borrowing from Britain.²

The emphasis was laid on the importance of placing the frequent crises at the parliamentary and cabinet level in their proper perspective against the great stability and continuity of policy that has characterized Australian government in this century. Notable contributions to this stability have been made by the fact that decisions about the distribution of the national income are, to a large extent, the province of decisions by semi-judicial arbitration tribunals, and by the very considerable independence of the large public utilities that manage the policies of 'development' that are the central concern of all Australian governments.³

In Victoria, for example, the series of explosions that occurred periodically from 1913 to 1952 were mostly concerned with electoral reform, and in New South Wales the repeated struggles within the Labour movement were, as often as not, fights for the leadership. Only on rare occasions, as in the depression years, or in Queensland in the early 1920s,

². ibid, p.348; also see Report of the Committee on Defections, Ministry of Home Affairs, Govt. of India, New Delhi (1969).
or the conscription schism of 1916, have substantial issues of policy been involved\textsuperscript{9}.

In state, politics, the unceasing trend towards dependence on the Commonwealth accentuates this situation, and election platforms reflect this in terms of promises to administer existing policies better rather than to introduce alternative ones. Moreover, though the independent power of the states has shrunk, their administrative apparatus has continued to grow, and problems of coordination and control have more and more become the chief pre-occupation of a state cabinet\textsuperscript{10}.

'Stability' in state government during the past generation has too often meant one-party rule and one-man rule. Whether it also means that the quality of government has declined is an inherently unanswerable question, requiring as it does comparisons with the past that are intrinsically unreliable. As the saying goes, things aren't what they used to be— but then, they never were. Nevertheless, certain clearly adverse consequences of one-party rule are apparent in the Australian states as they are, for instance, in the Canadian provinces. One is the decay of effective opposition, and with it the failure to recruit nay, to be positively afraid of vigorous and effective leadership.

The history of the Liberal opposition in New South Wales, or of the A.L.P. opposition in South Australia, are striking instances. The effectness of the constitutional opposition, matched by the decline of internal criticism within the government party, encourages the growth of a

\textsuperscript{9} ibid; also see Encel. S. Cabinet Government in Australia (1962), P.350; Jupp, James, Australian Party Politics (1964).

\textsuperscript{10} Supra note 4; also see Millar, J.B.D., Australian Government and Politics; Encel. S. Cabinet Government in Australia (1962).
legend of the papal infallibility of the Premier. The danger that the Premier himself may come to believe in the legend is suggested by the petulance of reactions to criticism of government acts. The Queensland Premier, Mr Gair, found it impertinent that the academic community should oppose legislation interfering with the appointments system of the University of Queensland. Sir Thomas Playford, in South Australia, was convinced that Press and Public attacks on the conduct of a Royal commission into the Stuart murder trial were malicious and subversive. The then Premier of Victoria, Mr. Henry Bolte, was outraged by criticisms of his Minister for Transport, Sir Arthur Warner.

The result is to strengthen the cabinet as against the party, and within cabinet, to strengthen the predominance of the Prime Minister. This was already evident during J.B. Chifley's term as Prime Minister, but under his successor R.G. Menzies it became far more pronounced, especially because of the longevity of the Menzies government. The adverse effects of this long term of office have been similar to those already noted in the states. The Labour Opposition has failed to exploit the most remarkable failures of both policy and administration, a task performed much more effectively on occasions by the Press. Some Ministers have become so closely identified with detailed departmental administration that it is not always clear whether they are speaking as the political or the permanent heads of their departments. Above all, the predominance of the Prime Minister has become so marked that the ministry often appears as a one-man show, where the conventions of cabinet responsibility are replaced by the effective responsibility of ministers to the Prime Minister alone.

\[11\] infra.
\[12\] supra note 6. P. 350.
The position of legislatures in United States is somewhat peculiar. While the American adheres broadly to the philosophy of party on whose ticket the legislators have been elected, on specific proposals and legislative measures coming before him, he is usually free from Rigid party whips. It is rightly said that each congressman or a senator is a law unto himself in United States. Since Party distinction is meaningful so far as broad principles are concerned and does not govern specifies inside the legislative chamber as much as in the classical pattern of parliamentary democracy, no serious notice is taken of different legislators of the same party voting in different ways on the same subject. In other words, there is no defection, because there is no strict adherence.

Still we have some notable examples of men like Senator Storm Thurmond who was a Democrat for number of years, founded, a third party and ran for Presidentship against Truman and after that joined the Republican party, and senator Wayne Marse who used to be Republican but in 1952 refused to support Eisenhower and defected to Democratic party.

The U.S.Supreme Court has addressed State Limitations placed on citizen participation in the electoral process in terms of the impact on the freedom of association. The Supreme Court held that a New York law requiring voters to enroll in the party of their choice before the general

---

14. ibid.
election in order to be eligible to vote in the following primary (a period of months) did not violate the right to Freely associate. The dissenters made explicit their view that a "less drastic enrollment deadline than the eight or 11 months now imposed" would be more in accordance with the Constitution and would be adequate to protect against political party raiding.

The American Court has held that the following State statutes ran afoul of the right to associate:

(1) an Illinois provision that prohibited a person from voting in the primary election of a political party if he had voted in the primary of an other party within preceding 23 months.

(2) an Indiana statute requiring political parties to file an oath stating the party does not advocate overthrow of the government in order to get on the ballot.

(3) a California statute that required payment of a filing fee for candidates for office without providing any alternative means for indigents.

In contrast the Court has upheld the following restrictions: (a) a California statute that denied a place on the ballot to independent candidates if they voted in the immediately preceding primary of a ways; 19.

(b) most of Texas statute that set up an elaborate formulation for nominating candidates in a general election and that seemed to disadvantage, but not unduly so, minority party and independents 20.

B. Indian Democracy

In this part, we will discuss and analyses the defection and the consequent constitution of Committee on Defection and its report and other Cases of defections.

Historical Background

The history of defection in politics in India can be traced back to the days of Rama. Even in Ramayana we find the very same defection. Vibhishana, brother of Ravana, defected from him and joined Rama.

During Montford Reforms, we find another example of Shyam Lal Nehru, a member of the Central Legislature who was elected on the Congress ticket but he crossed the floor and joined the British Side. At that time Pt. Moti Lal Nehru who was leader of the Assembly party strongly criticised and condemned him and Mr. Shyam Lal Nehru was expelled from the party 1.

The politics of defections have been a part of Indian political parties even before the 1967 general elections. In 1948, the Congress Socialist Party left the Congress party and directed all its members to resign their seats in the assemblies and seek re-election. But this ideal could not become a precedent. In 1950, twenty three MLAs defected from the Congress Party and formed the Jana Congress in Uttar Pradesh, Again in 1958 some ninetyeight MLAs openly defied the government which led to the fall of the Sampurnanand Ministry. The Praja Socialist party (PSP) is good case study of defections. In 1953 the PSP leader Prakasam defected from the PSP and joined the Congress to form the Government in Andhra Pradesh.

Thanu Pillai, the then Chief Minister of the State of the Travancore-Cochin is another instance of defection from the PSP. More or less some defections have been taking place in all the states but did not succeed to create more than a ripple. For instance, during the period 1957-1967, 97 members defected from the Congress and 419 defected to it. While in 1967-68 (one years period) 175 defected from it and 139 defected to it. During the period 1957-1967, 93 members defected from the PSP and only 11 to it.

In 1937 elections which were held under the Government of India Act. 1935, the Congress was returned with absolute majority in the United Provinces. However, the Chief Minister G.B.Pant deemed it proper to induce some members of the Muslim League to Cross the floor and join the Congress. One of these, Hafiz Mohammad Ibrahim was included in the Congress Ministry.
In the fourth general elections, congress retained majority in the Lok Sabha by securing 283 seats out of 520 seats but lost absolute majority in eight of the Sixteen states of the Union that went to the polls. Even in States where the party retained control, its strength was much depleted. However, in the eight states where congress has failed to get absolute majorities no single party had taken its place.

As a consequence of fourth general elections, the virtual monopoly of political power by congress party was shattered away. The highly disunited opposition saw in the situation an opportunity to seize power. The political parties which fought tooth and nail against each other at the polls forgot their ideological differences and came forward to share power on the basis of what were called the agreed minimum programme. Thus the most significant development of post fourth general election period was the formation of the coalition Governments of widely heterogeneous elements in several states. The other outstanding development that characterized the post fourth general election scene in

2. In fourth general Election Congress lost majority in the State Assemblies of Kerala, Madras, Orissa, Punjab, Rajasthan. Uttar Pradesh and West Bengal. In Rajasthan, President's rule had to be imposed before the Congress could form a government with the help of few defectors; in U.P.Congress managed to form a Ministry even though it was short lived, in Madras, Dr.M.Karunanidhi formed its government while in remaining five states non-congress coalition governments were formed.

Indian politics, was the phenomenon of large number of migratory legislators in various states indulging in frequent marches and counter-marches from one political platform to another. Mainly with a view to gain ministerial office or other personal benefit, if necessary, by helping to topple successive governments and forming others in their places.

The phenomenon of defection became acute and apparent after the Fourth General Elections in 1967 about which the figures speak for themselves. Whereas up to 1967, there have been only about 400 defections, within one year from the election of 1967, there were 500 odd defections, of whom, the figures also say, 118 were by persons who became Ministers or Ministers of State. The problem became so important from the point of view of preserving the best traditions of democracy and of setting certain norms of political behaviour.

1) Committee on Defection:

On August, 11,1967, a prominent Congress member of the Lok Sabha, P.Venkatasubbaiah who was Secretary of the Congress Party in Parliament, moved a non official resolution seeking appointment of a Committee on defections. The Lok Sabha discussed the matter at length on October 30,1967. a Haryana Legislator, Gaya Lal who had earlier crossed the floor to join the United Front Ministry returned to the opposition thereby further reducing the Front strength to 38 and increasing the opposition strength to 41. But within 9 hours, Gaya Lal once again changed his party to rejoin the United Front; he became a Parliamentary Secretary on November 1,1967. Thus by defecting thrice within a fortnight, Gaya Lal set a new record in the Chronicle of defection politics in Haryana. It is said that the title of "Aya Ram Gaya Ram" was given to Gaya Lal by Rao Birender Singh.
November 24 and December 8, 1967. The resolution was adopted by the House with an amendment moved by the S.S.P. leader Madhu Limaye. The resolution as passed by the House read as follows:

"This House is of opinion that a high level committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegiance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard."

Madha Limaye's amendment sought to omit the concluding portion of the original resolution which provided for the proposed Committee's evolving of a special machinery and taking the effective measures by suitable legislation to arrest this growing phenomenon which is assuming alarming proportions so that the country can function on sound and healthy lines of parliamentary democracy. He was of the opinion that it would be contrary to the provisions of the Constitution to impose by law any restrictions on floor crossing.

The Committee which was constituted by the House consisted of the Union Home Minister as Chairman, the Union Law Minister, the Union Minister for Parliamentary Affairs, the representatives of 8 political parties and three Independent Groups recognised by the Speaker in the Lok Sabha. And the other members were, Shri P. Venkatasubbaiah, Shri...

---


Jaya Prakash Narayan, Shri H.N. Kunzru, Shri C.K. Daphtary, Shri H.M. Seervai, Shri M.C. Setalvad and Shri Mohan Kumaramangalam.

Representatives party-wise were as follows:

01. Prof. N.G. Ranga - Swatantra.
02. Prof. Balraj Madhok - Jan Sangh.
03. Shri S.N. Dwivedy - PSP
04. Shri Madhu Limaye - SSP
05. Shri Bhupesh Gupta - CPI
06. Shri P. Ramamurti - CPM
07. Shri Ambazhagan - DMK
08. Shri N.C. Chatterjee - Progressive Group.
09. Shri Raghuvir Singh Shastri - Nirdaliya Sangathan.

In pursuance of the Lok Sabha resolution, the Government of India decided in February 1968 to appoint the above Committee which was constituted under the Chairmanship of the then Home Minister, Shri Y.B. Chavan, while informing the Lok Sabha of the appointment of the Committee on March 21, 1968 he described defections as "a national malady which is eating into the very vital of our democracy".

The Committee held six meetings on March 26, April 18, May 12, July 14, August 8 and September 28, 1968. The report of the Committee on Defections was signed on January 7, 1969 and was presented to Parliament on February 18, 1969.

In drawing up its report and formulating its recommendations, the Committee on defections placed before itself the following considerations:

---

(a) There can be no perfect or infallible deterrent for the kind of political defections that are rooted in political irresponsibility and opportunism and create instability, besides bringing the functioning of the democratic institution into disrepute.

(b) the task of devising remedial measures for a complex political problem has to balance carefully the need for ensuring political stability, with:-

(i) the natural processes of organic growth of parties;
(ii) the inevitability of a period of transition preliminary to the forgoing of ideological polarization or clarity with uncertainties attendant on the transition; and
(iii) the avoidance of rigidity which would impinge adversely on honest and genuine dissent or change of convictions or on readjustment of party alignments, in the form of mergers, splits, etc., as part of the process of reaching ideological polarization or clarity.

(c) The best legislative or constitutional devices cannot succeed without a corresponding recognition on the part of political parties of the imperative necessity for a basic political morality and the observance by them of certain properties and decencies of public life, and their obligations mutually to one another and to the citizens of this country; and

(d) The problem requires to be attacked simultaneously on the political, educational and ethical planes, so that by an intensive political
education both the elite and the masses, a full consciousness of the values of democratic way of life is created.

The Committee made several recommendations suggesting ethical, political constitutional and legislative solution of the problem in hand.

Ultimately, the general agreement was that the problem of defections can be effectively tackled by some sort of evolution of a Code of conduct amongst the political parties themselves. The problem has become a matter of concern to all, because the motivation for defections arising out of political opportunism, if it is to be met some constitutional measures, will have to be thought of.

While participating in the discussion on the recommendations made by the Committee on Defections, Shri Thillai Villalan traces the history of about 'Aya Ram and Gaya Rams'. He has argued that defection started from the days of Rama. Even in the Ramayana, we can find the very same defection. But it was not called defection, it was called treachery. Vibhishana, brother of Ravana, defected from Ravana and joined Rama, was responsible for the defeat of Ravana. But now we are experiencing a different kind of defection. Political instability is the main defect of this malady of defection. He has further termed defection as 'political cancer'.

---

8 Similar opinion has been expressed by Kashyap, Subhash C, Politics of Power - Defections and State Politics in India (1974), Page 92, also see Report of the Committee on Defections (1969); Report of the Sub Committee of Lawyers-, Committee of Defections (1968).

According to him the recommendations can be divided into two parts. One is medicinal and the other is surgical. So far as the ethical and political aspects are concerned, he has called them the medicinal treatment so far as the constitutional and legislative aspects are concerned, has called them as the surgical treatment\textsuperscript{10}.

First of all, the political parties and the persons representing their constituencies in the Assemblies and Parliament must follow a certain code of conduct. On the question certain code of conduct which ought to be followed by the Legislators, he further referred a couplet from Thiruk Kural\textsuperscript{11}.

\begin{quote}
\textit{"Chirai Kakkum Kappevan Seiyum Magalir Nirai Kakkum Kappe Talai".}
\end{quote}

The above couplet means the chastity of a women can be saved only by her own self and not by anybody outside. So the defector must control himself because he participates in an election as a candidate set up by a political party. He wants to represent a part of the country. Therefore, he must be a man with some principles. First, he must control himself because, according to this couplet, the woman alone can save her chastity,

\textsuperscript{10} (1969) R.S.D. (August 12, 1969) P.3784. In the report, the Committee has stressed on the solution as follows: 
\textit{"...a lasting solution to the problem can only come from the adherence by political parties to a code of conduct or set of conventions that took into account the fundamental proprieties and decencies that ought to govern the functioning of democratic institutions".}

\textsuperscript{11} ibid, P.3785; also see Mia Bashir Ahmad V. State of Jammu and Kashmir AIR 1982 J&K 26.
not any outside force. The defector must know that he is a man representing a number of people and so he must control himself.

So far as the surgical part of the treatment regarding defection, he suggested for an amendment in the Representation of the People Act as well as the Constitution. He further submitted that:

"There should be a right to the electorate to recall a defector. This is there in Switzerland. Because it is expensive, the proposition may not be practicable here. But it is the most democratic way of checking defections. We must amend the Constitution so as to provide for the right of recall to the people because it is the people who have given him the right to represent themselves to ventilate their grievances to express their own feelings."

Shri P. Chetia quoting the observation of the Committee on Defections which says as follows:

"...a lasting solution to the problem can only come from the adherence by political parties to a code of conduct or set of conventions that took into account the fundamental proprieties and decencies that ought to govern the functioning of democratic institutions".

He further quoted the Committee's recommendation which require that the standing committee be constituted which are reproduced as follows:-

"One suggestion placed before the Committee was that this could be achieved by having a Standing Committee or Board comprising leaders of political parties and men with legal background who were highly regarded in the country for their experience of public affairs, objectivity, integrity and political neutrality.

He further said that a defector must be kept out of public life for a prescribed period:

12   ibid, P. 3786.
13   ibid.
"Any political party which had a grievance against another for non-observance of the Code could take up the matter before the Board which, if the material before it was adequate, could convey its censure or disapproval which in due course would acquire moral sanction. When the Board censures a particular member for violating political properties, the political parties could be asked to ensure that he was kept out of public life for a prescribed period."

Bare perusal of the above "ethical" recommendations of the Committee, it is clear that the committee has tried to contain the future defections by recommending that a defector should be kept out of public life for a prescribed period.

The Lawyers Sub Committee which was constituted by the Committee on Defections after a very careful consideration of the constitutional and legal position stated:-

"As standing for election to Parliament or State Legislature is only a statutory right as distinct from a fundamental right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable in the public interest. On this basis it is possible to provide in a special legislation that a legislator who renounces his membership of or repudiates his allegiance to a political party, shall be disqualified from continuing as a Member of Parliament or of State Legislature."

But the above view of the Lawyers Sub Committee was rejected by the Committee on Defections.

14. ibid, P.3788.
15. ibid, P 3792.
"The proposal would have the effect of freezing political parties in their present state and thereby hinder their organic growth which was an essential part of democratic process. In the present situation, it would be harmful to do anything that would prevent polarisation of political forces; splits, mergers amalgamations, etc. were part of the process of ideological consolidation and they should not be interfered with."

II) Defector

The Committee on Defections after a careful consideration has accepted the following definition of 'defector':-

"An elected Member of a Legislature who had been allotted the reserved symbol of any political party, can be said to have defected, if, after being elected as 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."

III) Recommendations of Committee on Defections:

This definition was accepted, and on the basis of this definition the appointment of a defecting legislator was barred for a period of one year until he goes back to the electorate and gets himself re-elected. This recommendation was accepted.

Another recommendation was with regard to the limiting the size of the Council of Ministers. This was considered necessary because the number of people who were included in the Council of Ministers sometimes appears to be unending. As the life of the Government proceeded, the Council of Ministers went on inflating. And sometimes it was found that most of the Members of the party forming the Government were in the Council of Ministers. So in order to find a solution to this problem, the recommendation was made by the Committee that there should be limitation on the size of the Council of Ministers. Of course, what that size should be, certainly has become a bone of contention.

Another very important recommendation made by a group of very distinguished lawyers who were asked to go into the problem of the principle of limiting the size of the Council of Ministers. They recommended that the defectors should cease to be Members unless they go back and get themselves elected. That recommendation was made by the lawyers group. But the committee did not think it possible to accept this recommendations.18

M.C. Chagla While participating in the discussion on the recommendations made by Committee on Defections said:

"France is an illustration which our country should always bear in mind. you remember, Sir, that in France Ministries used to fall every six months and eight months. It was supposed to be a Ministry of very great stability if it lasted ten months or twelve months- which was hardly ever the case. Why was that? Because there were no fixed parties, because there were constant

18. ibid, P.3720.
fluctuations in Parliament, because people
did not adhere to any convictions or any
principles. The result of that was that a
dictator appeared on the scene, and the
dictator was General de Gaulle, who
practically put an end to the old system and
introduced a system where there was
stability in the country 1.

M.C. Chagla while participating in the discussion on the recommendations
made by the Committee on Defections observed.

"The so-called crossing of the floor or
change of conviction should normally take
place at the General Elections. It is at the
General Elections that the electorate decides
who should be its representatives. And once
those representatives are sent to Parliament
and to the Legislatures, by and large there
should be stability in the formation of
parties or groups of the Opposition. This
constant change is not desirable from the
point of view of parliamentary institutions".

He further said that the only time when a political person may be
permitted to change his party is the general election:-

"Therefore it is incorrect to say that you
will freeze the situation if you try and
prevent people from crossing the floor.
There is always the General Elections. There
is always the electorate. Let the electorate
decide. But once it has decided, normally it
is the duty of the Member to respect the
wishes of the electorate and to remain in the
party to which he has been elected 2.

On the issue of banning defection, N.A. Palkhivala has spoken very
strongly against it. He considers the proposal as "truly savage" and
the one which has nothing to do with defections 3.

19. ibid, p.3773.
20. ibid, p.3774.
1. Palkhivala, NA, 'Our Constitution Defaced and
Defiled' (1974) p.67'
Prior to the enactment of Anti Defection Act, 1985 According to the learned author:

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

M.C.Chagla who beside being Member of House of the Council for States, was an eminent lawyer, while participating in the discussion on the percentage of Council of Ministers, rejected the idea of fixation of percentage and he observed that:

"The Council of Ministers should not be as large as it is today either at the centre or in the States. Now, I am not one of those who believes that you should have a proportion fixed with regard to the Council of Ministers. To me it seems an absurd proposal that we must have 5 per cent, or 10 per cent or 15 per cent of the members of the legislature constituting the Council of Ministers."

The then Home Minister Shri Y.B.Chavan while concluding the discussion by Responding to the House on the recommendations of the "Committee on defections" had observed:

---

2. ibid, P.68.
"Therefore, the major field of recommendations that the Committee has made is the legislative measures that this Parliament should undertake. One recommendation is about the size of the Council of Ministers. The second is about barring the Members who have defected from the party in terms of the definition that the Committee has given. The third is that the Chief Minister of a State or the Prime Minister of the Country should be members of the Lower House and not of the Upper House. These are the three major recommendations of this Committee."

IV) 


After discussion before the Parliament, no measure was taken till 1973. The condition of the defection continued unchecked. During March 1967 to March 1971 some thirty two Governments were toppled. Significantly, almost every single case of collapse of state government was the direct result of change of allegiance by legislators. Several other states where governments did not topple were also, affected, to a larger or smaller degree, by this 'politics of defection'. After 1971 election to Lok Sabha the three Governments in Mysore, U.P. and Gujarat fell in quick succession in last week of March 1971, because of group defections.


Supra note 9, P. 330;
The fall of the Veerendra Patil Ministry of the Congress (O) in Mysore was followed by the imposition of the President's rule in the State on March 27, 1971. The S.V.D. Ministry in U.P. was defeated in the Assembly on March 30, 1971 and the Congress (R) leader, Sh. Kamalapati Tripathi was invited by the Governor to form a new government.
Congress was subject to a split in November, 1969 and the two Congress one headed by Nijlingappa and other headed by Jagjivan Ram came to be known as Congress(O) and Congress(R) respectively, Mrs. Gandhi belonged to Congress.(R).

During the brief period of two months (i.e. February, March 1971) immediately before and after March 1971 elections, Congress(R) attracted 149 defectors. It was thought that the defections would become the thing of past because of Mrs. Gandhi's impressive success in the elections as well as in the party crisis. Contrary to this popular impression, the average number and frequency of defections during 1971-73 period have been much larger than those during the entire 1967-1971 period. The flow continued unabated, only the directions kept on changing with the winds.

That Committee of Defections made certain recommendations and those recommendations were considered when the Constitution (32nd Amendment) Bill, 1973 was introduced first, and that Bill, for the first time, took cognizance of this phenomenon of what has come to be termed as "Aya Ram and Gaya Ram". People crossed Floor without any intelligible

The last of the old Congress government appeared on the way out with Hitendra Desai having submitted the resignation of his Ministry in Gujarat on March 31, 1971 even if only as a calculated move to make one last effort for the survival of his leadership and possible revival of Congress (O) majority by inducing some defectors. The resignation was submitted quickly after bulk defections from Congress (O) to Congress (R).
principle, but crossed the Floor mainly actuated by opportunist or
for the purpose of gaining a political advantage or a personal
advantage.

After considering The Report of the Committee on Defections, the Government introduced on May 16, 1973 the Constitution (Thirty Second Amendment) Bill 1973\(^6\) the Lok Sabha. The Bill, *inter-alia* provided that the Prime Minister/Chief Minister who is not a member of the House of the People/Legislative Assembly, as the case may be, shall acquire its membership within six months of assumption of that office\(^7\).

\(^{6}\) The statement of Objects and Reasons:
"When the Report of the Committee on Defections was considered it was felt that the recommendations that a defector should be rendered ineligible for certain offices of profit for a stipulated period would not provide an adequate solution and that it would be more appropriate to amend the Constitution with a view to disqualifying a defector from his continued membership of the legislature".

\(^{7}\) The Constitution (32nd Amendment) Bill, 1973 proposed to amend Article 75 by incorporating the following clause (5):

"5. Prime Minister who for any period of six consecutive months is not a member of the House of the People or any other Minister who for any period of six consecutive months is not a member of either House of Parliament, shall at the expiration of that period cease to be the Prime Minister or as the case may be, a Minister".

A similar provision was proposed to be substituted by clause (4) of Article 164.
It was proposed to insert the following clause to article 102 of the Constitution:

"(2) A person shall be disqualified for continuing as a member of either House of Parliament:-

(a) if he, having been elected as such member, voluntarily gives up his membership of the political party by which he was set up as a candidate in such election or of which he became a member after such election; or

(b) if he votes or abstains from voting in such House contrary to any direction issued by such political party or by any person or authority authorised by it in this behalf without obtaining prior permission of such party, person or authority.

(3) Notwithstanding anything in clause (2), a member of either House of Parliament shall not be disqualified under sub-clause (a) of clause (2) on the ground that he has voluntarily given up his membership of any political party if he has given up his membership of such political party by reason of a split therein.

(4) Notwithstanding anything in clause (2), where there has been a split in any political party (referred to in this clause as the "Original political party") and any group of members thereof has been registered under any law or any rule, regulation, order or notification having the force of law with respect to matters relating to, or in connection with, elections to either House of Parliament as a separate political party (referred to in this clause as the "new political party"), then a member of either House of Parliament who belonged to the Original political party and who became a member of the new political party shall not be disqualified under sub-clause (b) of clause (2) on the ground that he, at any time after the registration of the new political party, has voted or abstained from voting contrary to any direction of the original political party or any person or authority.
The Constitution (32nd Amendment) Bill, 1973 was a relatively short document consisting of ten clauses. It sought to amend eight articles of the Constitution, namely articles 75, 101-103, 164 and 190-192. Actually it would be seen that none of the recommendations of the Chavan Committee having a bearing on the problem of defections had been incorporated in the Bill. On the other hand, proposal which were bitterly opposed by some members of the Committee or which were not at all considered by the Committee find a place in the proposed amendment Bill. Clauses 2 and 6 of the Bill seek to amend article 75 and 164 with a view to implement the proposal that the Prime Minister of India and the Chief Ministers of the states should be member of the Lower Houses of the respective legislatures. In case a person who is not a member of the Lower House is appointed the Prime Minister of Chief Minister. He cannot continue as such for more than six months without getting elected to that House. Clause 10 declares that the amendment of Article 164 shall not apply to any present incumbents of the office of the Chief Minister till the expiry of a period of six months.

The Principle was proposed to apply in keeping with democratic theory and practice elsewhere and by and large, with the prevailing norms and conventions in India. There was general consensus on the principle in the Committee on Defections. However, all this hardly had much direct relevance to the problem of defections.

The provisions so far as the problem of defections is concerned are those pertaining to disqualification from membership and the new role and

---

8. A similar provision was proposed to be substituted by amendment to Article 191 of the Constitution.
importance proposed to be assigned to political parties. Clauses 4 and 8 of the Bill sought to disqualify a person from continuing to be a member of Parliament or State Legislature if he voluntarily gives up the membership or votes or abstains from voting against the direction of the party by which he was set up as a candidate for election or which he joined after such election. It has been specifically provided that the proposed disqualification shall not apply to those cases where a legislator resigns from or votes against his party by reason of split in the party. Political party has been defined to mean any party classified as a recognised political party under election laws or any other party recognised by the Speaker or Chairman of the House as a political party and consisting of not less than 1/15th of the total membership of such House.

Thus, under the 1973 Bill, political parties would for the first time acquired constitutional recognition in Clauses 4 and 8 and status, and the party bosses an unprecedented hold over the minds and souls of the elected representatives of the People.

Clause 5 and 9 provided that the President and the Governor, as the case may be, shall not entertain any question regarding the disqualification of a legislator unless it is referred to him by the political party concerned.

However, the Bill left the independents or members of the smaller unrecognised parties completely out of the preview of the disqualification clauses.

The Bill of 1973, however, lapsed with the dissolution of the House of the People on January 18, 1977.
The Bill of 1978:

The matter was again considered by a Committee headed by Chaudhary Charan Singh, the then Union Home Minister and on the basis of the Report of this Committee a bill known as the **Constitution (Forty-eighth Amendment) Bill, 1978** was introduced in the Lok Sabha on August 28, 1978. The Bill proposed to specify defection as a disqualification under Articles 102 and 191 of the Constitution. A New Schedule to be called as the 'Tenth Schedule' was also proposed to be inserted to the Constitution for making detailed provisions as to disqualification on the ground of defection. One of these provisions, however, provided that the disqualification on ground of defection should not apply in case of a split in the political parties.

It was also provided that the Election Commission may, by order provide for registration of political parties for the purposes of proposed Tenth schedule and the Presiding Officer of a House should likewise provide for the recognition of political parties for the same purpose. The relevant provisions sought to be included in the Tenth Schedule**A**.

---

A member of a House shall not be disqualified under paragraph 2 if he gives up his membership of his original party and becomes a member of a new political party formed as a result of a split in his original political party, but from the time he becomes a member of such new political party:

(a) he shall be deemed to belong to such new political party for the purposes of paragraph 2; and
such new political party shall be deemed to be his original political party for the purposes of this paragraph:

Provided that:-

(i) not less than twenty five per cent of the members of the Legislature party concerned, or where the strength of such Legislature party is less than twenty, not less than five members of such party, are members of the new political party and

(ii) the new political party has been recognised by the Chairman or, as the case may be, the Speaker of such House or registered with the Election Commission under this Schedule.

Power to make orders: (1) The chairman, or, as the case may be, the Speaker, of a House may, by one or more orders, provide for the recognition of political parties for the purposes of this Schedule, the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong and for such other matters of as he may deem necessary for the discharge of his functions under this Schedule.

(2) The Election Commission may, by one or more orders, provide for the registration of political parties for the purposes of this Schedule, the maintenance of registers or other records as to the political parties, if any, to which different members of various Houses belong and for such other matters as may appear to it to be necessary
In 1977 when the internal emergency was revoked and elections were declared, a group of congress leaders deserted the party and formed another party named CFD (which entered into an alliance with Janata Party to go to the polls, after the election joined the Janata Government and later merged with the Janta Party). A wave of defection started from congress to either CFD or Janta Party. Again after the second split of January 1978 in the Congress Party, when Cong (I) secured majority in almost all the southern states in Assembly polls a large number of Congress members defected to Congress(I) fold.

It is often suggested that the greatest strain on the Indian democracy is the politics of defection, and for this, an essentially political problem, the legal and constitutional solutions have been suggested from time to time. In this series is the Constitution (Forty-eight Amendment) Bill, 1978 which the Janta Government tried to introduce in the monsoon session of Parliament, but on the face of stiff opposition from the Opposition and some of its own vocal and influential members, it withdrew it hastily. Ironically, every political party swears that it is

---


10. The Bill was attempted to be introduced, in the Lok Sabha on 28 August 1978 by the Education Minister P.C. Chunder (since Law Minister, Shanti Bhusan, was busy in the Rajya Sabha).

Leading the opposition to the Bill, Madhu Limaye thumbed the table with these words, "The Janata Party was committed to the legislating against defection but not the destruction of the freedom and
against the politics of defection and is for imposing legal ban on defections.

The Constitution (48th Amendment) Bill 1978 was practically withdrawn before it could be introduced. Briefly the Constitution (48th) amendment Bill, sought to make defections from political parties by legislators a reason to disqualify from being members of the legislature.

The Bill proposed that in Article 102 of the Constitution for sub-clause (e) of clause (1) shall be substituted.

Para 2 in the proposed Tenth Schedule lays down as follows:

"Subject to the other provisions of paragraph 3, a person shall be disqualified on the ground of defection for continuing as a member of a House:

(a) if he voluntarily gives up his membership of the political party to which he belongs; or

(b) if he votes in such House Contrary to any direction issued by the political party to which he belongs or by any person or any authority authorised by it in this behalf, without obtaining the prior permission of such political party, person or authority and liberties of members of Parliament."

He was joined practically by all the opposition parties, including the CPM in opposing the Bill.

The Constitution (48th Amendment) Bill 1978 provided for the substitution of sub clause (e) to clause 1 of Article 102 as follows:

"(e) if he is so disqualified by or under any law made by Parliament, and a person shall be disqualified for continuing as a member of either House of the Parliament if he is disqualified on the ground of defection under the tenth schedule":

34
he has been expelled from such political party within thirty days of such voting on the ground that he so voted 12.

According to paragraph 2 of the proposed Tenth Schedule which was to be substituted by the Constitution (Forty eighth Amendment) Bill, 1978, a legislator resigning from his political party or voting against it without prior permission from the party authorities and being, in consequence, expelled from it within 30 days will be deemed defector for the purposes of above disqualification clause (a) of Paragraph 1 of the Tenth Schedule to the Constitution (Proposed by the 48th Amendment), Bill defined 'Political party' in relation to a House as follows:-

"(i) an association or body of citizens of India which is registered or deemed to be registered under this schedule (xth Schedule) with the Election Commission for the purposes of elections to such House, or

(ii) an association or body of members of the House (whether or not such association or body includes other persons) which is recognised by the Chairman or as the case may be, the Speaker of such House as a political party for the purpose of this schedule 13.

Para 3 of the proposed Tenth Schedule which was proposed to be substituted by the Constitution (48th Amendment) Bill, 1978 reads as under:-

"A member of a House shall not be disqualified under paragraph 2 if he gives up his membership of his original political party and becomes a member of a new political party formed as a result of split in his original political party.

Provided that (i) not less than 25% of the members of the legislative party concerned or where the strength of such legislative party is less than twenty not less than five

13. ibid
members of such party are members of the new political party.

(ii) the new political party has been recognized by the Chairman or as the case may be, the Speaker of such House or registered with the Election Commission under this Schedule.

The split cases were exempted and termed as 'genuine split' in a party. However a split being defined as the breaking away of not less than 25% of the members of the party in the legislature and where a party has Lesser them 20 legislators, the split may be affected by breaking away of not less than five members.

The Constitution (32nd Amendment) Bill, 1973 also provided that the proposed disqualification shall not apply to those cases where a legislator resigns from, or votes against his party by reason of split in the party. Political party has been defined to mean any party classified as a recognised political party under election law or any other party recognised by the Speaker or the Chairman of the House as the case may be, as a political party and consisting of not less than 1/15th of the total membership of the House.

On making a comparative examination of the two Bills, it becomes clear that the both the Bills envisaged some what similar approach towards the problem of defection. Both the bills left the independents completely out of the purview of disqualification clauses.

14. ibid.
Shri H.N. KUNZRU dissented with the Committee on Defection in regard to the distinction as it intended to distinguish between defection and split is a party:-

"In the course of the discussions in the Committee about members of the legislatures who leave their parties, a distinction was made between an individual member leaving his party and a group separating itself from its party. The Chairman himself expressed the view that a change of party loyalty by a group could not be treated in the same way as similar action by an individual."\(^{14A}\)

He further said that:

"This should be brought out in the report so that the definition of 'defector' may not be so narrow as to treat individuals and group alike. It should be made clear that the members of a party are entitled to leave it when the party follows a course which was not contemplated at the time of the General Election or which they honestly differ from.\(^{15}\)

Post Fourth General Election period, a considerable part of instability can be directly or indirectly traced to the role of independents and their attempt to bargain. After 1967, elections to the state Assemblies largest number of defectors to various political parties, most of them being to the congress-were contributed by 'Independents'. Of the 174 "independents" elected to the Assemblies in Bihar, Haryana, M.P., Manipur, Punjab, Rajasthan, U.P. and West Bengal in 1967 elections as many as 90 joined various political parties within a year of their election and played very decisive role in toppling the existing governments and in installing new ones\(^{16}\).

---

14A Infra
15 Minute of dissent to the Report of the Committee on Defections 1969.
16 Supra note 9, P.342.
A close examination of group defections, ideology or honest programmatic differences have been the least significant motivations. Except in situations of marginal majorities, it is relatively more difficult for a lone defector to bargain with an organised party. After all, whether it is one member who crosses the floor or it is a group of members, the nature and content of the act is the same and we cannot dub one as defector and the other as the 'split' in the party and thus the distinction made by the Bills is not valid.

E. Election Commission Recommendations:

The Election Commission had expressed its anguish at the unethical practice of defection which adversely affected the stability of the Governments and has sought suitable amendments in the law. It had said:

"The Fourth General Elections of 1967 brought in its trail a wind of swift changes in the political atmosphere of this country. That wind is still blowing sometimes with the velocity of a storm and at other times at lower speed. Perhaps in a developing democracy as ours is, that is not quite unexpected and may even be regarded as the teething trouble of a healthy growing child."

The Election Commission further observed:

---


18. Infra
"When the results of the Fourth General Elections of 1967 were declared, it was found that the Indian National Congress which had till then been the dominant political party throughout India had lost its majority in a number of State Legislative Assemblies and its majority in the House of the People had also drastically dwindled. This not only resulted in the formation of non-Congress governments in a number of State Assemblies forgot the election promises and pledges held out to the electorate at the time of election by and on behalf of the parties by whom they were sponsored and started defecting in large numbers in quick succession from their respective parties."

It further said:

"The elected representatives forgot that defection and re-defection from one party to another is not paying in the long run, and more often than not it acts as a boomerang hitting the person by whom it is resorted to. The moral consequences of defection and floor-crossing are sometimes far reaching and serious."

In 1977 Commission made a specific recommendation that defection of legislators from one political party to another should be prohibited by providing that such defection shall result in vacation of the seat held by the legislator concerned in Parliament or the State Legislatures, as the case may be.

Commission also wanted that some other disqualification should also result from such defection. The Commission thought that no amendment to the Constitution would be necessary to achieve the above objective as was sought to be provided in the Constitution (32nd Amendment) Bill introduced in 1973 and 1978.

\[\text{Election Commission Report on the Mid-term General Election in India 1968–69.}\]
The purpose could be achieved by a suitable amendment to the Representation of the People Act, 1951 in the part relating to the disqualifications by specifying defection as one of the grounds for disqualification of a person to be chosen as, or for being a Member of Parliament or State Legislatures.

In that event the declaration made by the candidate in his nomination paper will be of assistance in the determination of the question of defection of a member from the political party after he has been elected on the ticket of that political party. As in the case of other disqualifications referred to in articles 102 and 191 of the Constitution, the disqualification on grounds of defection could also be referred to the Election Commission for tendering opinion to the President or the Governor, as the case may be and the President or the Governor shall act on such opinion tendered by the Election Commission.

The Constitution (Forty eighth Amendment) Bill, 1978 was opposed at the stage of introduction itself both by some ruling party members as well as the opposition as certain features of the Bill did not satisfy them. After some discussion, the motion for introduction of the Bill was withdrawn by leave of the House.

Post 1985 Cases

The Congress Government headed by Shri Rajiv Gandhi was elected to power in the elections to the Lok Sabha held in December 1984. In its election manifesto the party had promised to bring forward a legislation on electoral reforms. Fulfilling this promise the Government introduced the Constitution (Fifty second Amendment) Bill, 1985 soon after assuming office.
The Constitution (Fifty Second Amendment Act, 1985)

The Statement of Objects and reasons appended to the said Bill stated as under:

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

In order to bring about a national consensus on the Bill, the Prime Minister Shri Rajiv Gandhi held prolonged consultations with the leaders of Opposition groups. The Government acceded to the demand of dropping a controversial clause from the Bill relating to disqualification of a member on his expulsion from his political party for his conduct outside the House. The Bill was passed by the Lok Sabha and Rajya Sabha on 30th and 31 January, 1985, respectively. It received the President's assent on 15 February, 1985. The Act came into force with effect from March 1, 1985 after issue of the necessary notification in the Official Gazette.

The Constitution (Fifty second Amendment) Act, 1985, amended articles 101, 102, 190 and 191 of the Constitution regarding vacation of seats and disqualification from the membership of the Parliament and the State Legislatures and added a new schedule as 'Tenth Schedule' to the...
Constitution setting out certain provisions as to disqualification on grounds of defection.

i) Basic features:

Shri A.K. Sen, the then Union law Minister explained the basic features of the Bill:

"The basic features of this bill may be explained in a few words. We have brought every political party within the Bill. We have not continued the Bill to parties having symbols or receiving recognition from the Election Commission. If any party puts up a candidate, and that candidate gets elected on that party ticket, it will be impermissible for that person to resign from that party and join some other party, or disobey the mandate of that party, on the floor of the House".

Shri Vijay N. Patil\(^2\) participating in Lok Sabha Debates said that defection takes place mainly on two occasions; one at the time of change of Government, under money power, if the person is after becoming a Minister or the like. Secondly, defection takes place at the time of elections. One or two months before elections, people see which way the wind is blowing and which party is going to get majority, and seeing that wind, one month before the elections they even resign and join the other party.

In view of this, if we want to curb defections in such cases also and maintain the party strength, the ideological strength of each party, one additional provision should be made that such a person who defects at this stage would be debarred from standing in the election on that party's ticket for one year. Only in that case, there would be some deterrent, for this kind of defections.

---

2. ibid, P. 84
However, both the constitution amendment Bills (32nd and 48th) left the independent members completely out of the purview of disqualification clauses.

Prof. Madhu Dandavate\(^3\) analysed the historical conditions of defections as follows:

"The defection polluted the political climate for a very long time and it also threatened the very basic structure of parliamentary democracy. I would like to indicate here, what happened between 1967 and 1968. Some of the Old veteran parliamentarians are here in the House and they may recall that the period 1967 to 1968 was the period of precursor to political defection in the country, and during those 10 months, 1967-68 you will be shocked and surprised to know that there were 438 political defections"\(^4\).

He further said that:

"What was the motivation of that defection that brings us to the base of this Anti Defection Bill? Out of 438 political defection that took place between 1967 and 1968, what was the fate of those 438 defectors? You will be surprised and shocked to know that out of 438 defectors who defected from one party to another, 210 defectors became members of the Council of Ministers in various States. That indicates what was the motivation of political defection. We have found in Andhra, in Kashmir, in Karnataka, in Haryana and in Sikkim. Wholesale defection"\(^4\).
ii) **Defection defined:**

Quoting Lok Nayak Jay Prakash in formulating a fine definition of what is called 'defection', Shri Dandavate Quoted:-

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

---

iii) **Difference between dissent and defection:**

Explaining the difference between dissent and defection Shri Dandavate quoted instances of dissent in times of war when Herbert Morrison had moved an adjournment motion in the House of Commons, to express dis-satisfaction about the weaknesses of war and defence policy of Chamberlain's Government in U.K, a numbers of members of his own party, Members of the ruling party, voted with the opposition on the adjournment motion and Chamberlain had the grace to declare that since a number of Members of his party had voted for the adjournment motion which amounted to censure of Government he would resign from the Government taking conzisance of the desire of the people and Parliament that the defence and war policy must be strengthened. Then came the National Government headed by Winston Churchill. These are some of the glorious instances in the history of world's parliamentary democracy. Therefore, our anxiety is to

---

see that defection are totally eliminated and their polluting influence on politics is totally destroyed, we should not allow the distinction between dissent and defection to be blurred completely\(^6\).

iv) **Democracy and Defection:**

Shri Ashok Sen the then Union law Minister moved the Constitution (52nd Amendment) Bill, 1985, as passed by the Lok Sabha for consideration by the Rajya Sabha, observed\(^7\) that:

" defection tendency was frowned upon by every section of the public, by all reasonable and responsible Legislators everywhere and by all political parties worth their name. It is felt that this must be curbed if proper and healthy functioning of our democratic system was to develop on lines which would be not merely a matter of pride, but would be a matter for administration for the outside world. There is no doubt that our democracy and our functioning of the Parliamentary system which the Constitution gave us in 1950 had evoked admiration not merely from the democratic people of our country but also from the outside world".

He further pointed out that:-

" The entire colonial world emerged after our independence and set up Parliamentary systems on the pattern of the Westminster System, some on our pattern and some on the pattern of the Federation of the Nigeria. One after another, we found those democratic systems floundering and collapsing. Without mentioning the names

\(^6\) ibid, 71.

of the countries, it is enough to state that all over Africa today, one would like to see, if there is any democracy functioning on a multiple party system where freedom of the individual is guaranteed and the courts function without fear or favour and the people elect their representatives freely and without interference. Nearer home, in Pakistan and Bangladesh, which started their Parliamentary systems almost simultaneously with us excepting that Bangladesh got it after a civil war separately, but, nevertheless, as a part of the whole of Pakistan, undivided Pakistan, it did inherit a Parliamentary system almost at the same time as ourselves.

The Learned Law Minister has further pointed out as to how military dictatorship have overthrown the elected Legislatures in the neighbouring countries:

"They had got one Constitution after another. But each time the Constitution came into force and elected representatives were sitting in their Parliaments and Governments responsible to the elected Legislatures came to function were overthrown by military dictatorship. And today in the whole of Asia, we remain like an oasis in the desert where democracy is still cherished and where Fundamental Rights of life and liberty and all representatives of Government are still regarded as a necessary minimum for an honourable existence."

The Learned Law Minister further said that the legislators elected on a particular party symbol will not be allowed to change the party affiliations:

---

8 ibid
"The Congress party pledged through the President's speech to bring about a proper law outlawing defections so that representatives elected on certain principles and on certain party labels would not be allowed to betray the trust which was reposed in them at the time of their elections. They would not be allowed to betray patently and blatantly the trust on the basis of which they had come to be elected."

Shri Ashok Sen further clarifies that our democracy function through parties:

"We regard a party system as a necessary ingredient of our democratic functioning, that our parliamentary system functions through parties, through the party mechanism and through the interplay of party rivalries and hostilities. Our system flourishes in arriving at decisions freely given through opposition in a freely elected legislature at the Centre and in the States, which is accepted by the people as a proper verdict of the people. This is the very essence of our system."

Shri M.C. Bhandare, quoting SIR Ivor Jennings on the principle of vote against one's party said:

"The Government's control over its majority is substantial. To vote against the Government is to vote against the party. To rebel against the Government is to leave the party. To leave the party is to lose party support at the next election; and since the average elector votes for the party label, this means, probably, that the member will not be re-elected. Membership of the House and accession to office alike depend on party service and party support. Self-interest dictates support even when reason suggests opposition. Moreover, to vote against the Government is to vote with the enemy. To assist in defeating the Government is to risk the coming into office of the Opposition a

10. ibid, p.23.
11. ibid, p.23.
result which is, ex-hypothesi, worse than keeping the Government in office.\footnote{12}

\section*{v) Difference between Monarchy and Republic:}

Shri Bhandare further explained that Monarchy lives by honour and Republic by virtue. He Quote, David Hume

"To balance a large State of Society whether monarchical or Republican, on general laws is a work of so great difficulty that no human genius, however, comprehensive is able by the mere dint of reason and reflection, to effect it. The judgment of many must unite in the work; experience must guide their labour, time must bring it to perfection; and the feeling of inconvenience must correct the mistakes which they inevitably fall into in their first trials and experiments. 'Monarchy lives by honour and Republic by virtue'. It is our virtuous men and workmen who constitute our electorate who will ultimately determine the political future of the country.\footnote{13}"

The Constitution (52nd Amendment) Bill, 1985 as passed by the Both Houses of the Parliament, received the assent of the President of India on February 15, 1985. The Amendment Act, 1985 came into force w.e.f. March 1, 1985.

\section*{vi) Freedom of speech and expression and defection:}

An evil with a cancerous growth, the pangs of political defections were gradually heading to swallow the democratic system itself. Abuse of the status of a legislator brought to prominence the unethical side of the freedom of speech and expression and the freedom to form association. The Tenth

\footnote{12}{(1985) R.S.D. (January 31, 1985) P. 48} \footnote{13}{ibid, P. 50}
Schedule was enacted for cleaning public life by providing for disqualification on the ground of defection. The laudable object of putting an end to horse trading by legislators has been partially achieved by the Anti Defection law.\textsuperscript{14}

Disqualification on the ground of defection is attracted if a legislator voluntarily gives up the membership of the political party to which he belongs or where he votes, or abstains from voting contrary to the directions issued by the party or by the person, or the authority authorised by the party in this behalf, without obtaining prior permission and if such voting or abstention has not been condoned within a period of fifteen days from the date of voting or abstention. Provision has also been made for disqualification of nominated and independent members under specified circumstances.\textsuperscript{15}

vii) **Political Party and Anti Defection Law**

It is interesting to note that the term 'Political party' got official recognition for the first time by this amendment Act and it found a place in the Constitution. Prior to this, 'Political party' was


\textsuperscript{15} ibid, also see Kihoto Hollohan V. Zachillhu (1992) Supple(2) SCC 651; Prakash Singh Badal Vs. Union of India AIR 1987 P&H 263; DR Luis Proto Barbora (1992) Supple(2) SCC 644; Bhajaman Bobera Vs. Speaker Orissa Legislative Assembly AIR 1990 Orissa 18; Ravi S.Naik V. Union of India (1994) Supple(2) SCC 641; Kashi Nath G.Jalmi Vs. The Speaker (1993) 2 SCC 703.
mentioned only in the Registration of Electors Rules 1960 in rule 11 (c) in the context of supply of two copies of electoral rolls to political parties for which a symbol has been exclusively reserved. Later on the term 'political party' also found a mention in the Representation of People Act, 1951 when an explanation was added to Section 77 of the Act to clarify the position regarding the inclusion or otherwise of expenses incurred by political parties in, the accounts to be furnished by the contesting candidates.

The Anti Defection Law which is popularly known as-Constitution (52nd Amendment) Act, 1985 in its sub paragraph 4 of Para 2 of the Tenth Schedule incorporate be following provisions:-

" (4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall,-

(i) where he was a member of a political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party;

(ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of this paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph".
viii) Nominated and Independent Members

The Tenth Schedule to the Constitution, inter alia, provides that an elected member of Parliament or a State legislature, who has been elected as a candidate set up by a political party and nominated member of Parliament or a State Legislature who is a member of a political party at the time he takes his seat would be disqualified on the ground of defection if he voluntarily relinquishes his membership of such political party or votes or abstains from voting in the House, contrary to any direction of such party;

An independent member of Parliament or a State Legislature will be disqualified if he joins any political party after his election.16

A nominated member of Parliament or a State Legislature who is not a member of a political party at the time of his nomination and who has not become a member of any political party before the expiry of six months from the date on which he takes his seat shall be disqualified if he joins any political party after the expiry of the said period of six months.

---

No disqualification would be incurred where a member claims that he belongs to a group representing a faction arising from a split in a party or merger of a party in another provided that in the event of a split the group consists of not less than one third of the members of the legislature party and in case of a merger of not less than two thirds of the members of the legislature party concerned.

x) Presiding Officers and anti Defection Law

The Constitution (52nd Amendment) Act, 1985 has for the first time empowered the Speaker of House of the People or the State Legislative Assembly, as the case may be, or the Chairman of the Council of States or the State Legislative Council, as the case may be, to adjudicate upon the issues involving defection by the members of the respective Houses of the Legislatures. Prior to the enactment of the Anti Defection Law such a power was not conferred upon the Presiding Officers-Speaker/Chairman.

No disqualification is incurred by a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or of the Legislative Assembly of a State or to the office of the Deputy Chairman of the Council of States, or the Chairman, or the Deputy Chairman of the Legislative Council of a State, if he severs his connection with his political party.

\[17\] ibid, also See Ravi S.Naik V.Union of India, 1994 Supple(2) SCC 641; G.Viswanathan V. The Speaker, T.N. Legislative Assembly (1996) 2 SCC 353; Dr.Luis Proto Barbosa V. Union of India (1992) Supple(2) SCC 644; Prakash Singh Badal Vs.union of India AIR 1987 P&H 263.
The question as to whether a member of a House of Parliament or State Legislature has become subject to disqualification will be determined by the Chairman or the Speaker of the respective House, where the question is with reference to the Chairman or the Speaker himself, it will be decided by a member of the concerned House elected by it in that behalf.

xi) **Rules under Para 8 of the Tenth Schedule:**

The Chairman or the Speaker of a House has been empowered to make rules for giving effect to the provisions of the Schedule. The rules are required to be laid before the House and are subject to modifications/disapproval by the House as the House may deem necessary.

All proceedings in relation to any question as to disqualification of a member of a House under the Schedule will be deemed to be proceedings in Parliament within the meaning of Article 122 or, as the case may be proceedings in the Legislature of a State within the meaning of Article 212; and notwithstanding anything in the Constitution, no court will have any jurisdiction in respect of any matter connected with the disqualification of a member of a House.

---

With the enactment of Anti Defection Law, the defection has not come to an end. During the Tenth Lok Sabha period, there have been as many as a dozen group defections or party splits in legislature parties. All of such splits were not deserving the protection under the 'split' or 'merger' clauses. The Telugu Desam Party, the Jharkhand Mukti Morcha, the Shiv Sena, the Samajwadi Party, the Indian Union Muslim League, the Assam Ganatantra Parishad, the Janta Dal and Janta Dal (A) have all been reduced in strength because of successive defections. The greatest beneficiary in the entire process has been the Congress (I) led by Shri P.V.Narsimha Rao and the worst loser was Janta Dal. From a minority Government with 251 members, the Congress acquired an overall clear majority of 267 against the combined opposition strength of 261 in an effective House of 528 members. By protecting the defectors in the name of splits or mergers, the Anti Defection Law may be said to have been a source of stability for the Congress Government which graduated from a minority to a majority Government.

Practically the defection has been legalised in the name of split and mergers. Some of such split are protected by the law and some are not.

Telugu Desam party - Split and Merger

According to a recent study, everytime that the Rao Government faced a non-confidence motion, there were additions to its strength through defections. In March 1992 it was the group
of 6 from TDP which defected and finally merged with the Congress (I)

xiv) **Janta Dal Splits and mergers:**

The July 1992 no confidence motion moved by the opposition was won by the Government with the help of the 20 member Ajit Singh group which was more than the magic figure of one thirds and the July 1993 motion nabbed the famous seven saviours again from Janata Dal.

On August 7, 1992 the 20 Janta Dal members sought separate in the House of People.

**Janta Dal The Second Major Group Defection:**

While Lok Sabha Speaker Shri Shivraj Patil was holding open hearings in the case of twenty Janta Dal members under the Anti Defection law, the Chief Election Commissioner, in a swift move, recognised the Janta Dal faction headed by Shri Ajit Singh as a national party under the title, the Janta Dal (A). The other faction headed by Shri Bommai was recognised as Janta Dal (B). Separate symbols were assigned to both. This put an end to any doubts in regard to the split in the Janta Dal. However, it needed to be clearly understood that the recognition by the C.E.C. was only for the political parties and for the purpose of elections and allocation of symbols. It had nothing to do directly with the recognition of legislature.

---

parties which was the sole preserve and prerogative of the Presiding Officers.

On June 18, 1993, one of the four M.Ps. Ghulam Mohammad Khan who was disqualified by Speaker Patil on July 1, 1993 moved the Delhi High Court for quashing the Speaker's order. On 2nd July, the court granted interim stay on the enforcement of Speaker's orders in respect of Khan and three other members, namely Ram Sunder Das, Govind Chandra Munda and Ram Badan.

According to one of the members, Anadi Charan Das, when the 20 members originally parted company with the Janata Dal to form J.D.(A) the understanding throughout was that they would join the Congress. But since Ajit Singh appeared to be indecisive, the seven decided to form a separate group to support the Rao Government.

One of the seven defecting members very candidly admitted on July 30, 1993 that the group of seven would consider merging with the Congress if its members were offered ministerial berths.

We will discuss in detail the split and the constitutional mandate in respect in Chapter IV-Splits, Mergers under Anti Defection Law.

The Third Major Group Defection from Janata

On July 28, 1993 the 20 member Janata Dal (A) in the Lok Sabha was further broken up when seven of its members asked the Speaker for recognition as a separate group. The seven included Ram Lakhan Singh Yadav, Ghulam Mohammad Khan, Ram Saran Yadav, Roshan Lal,

---

recognition as a separate group. The seven included Ram Lakhan Singh Yadav, Ghulam Mohammad Khan, Ram Saran Yadav, Roshan Lal, Govind Chandra Munda, Anadi Charan Das and Abhaya Pratap Singh. These seven defied whip issued by the J.D.(A) and voted against the opposition motion expressing confidence in the Congress Government. There was considerable confusion in regard to the vote of Munda who was alleged to have initially abstained from voting on the No-confidence motion but was later pressurised by some Ministers and others in the lobby to change his vote to one against the motion by using the correction slip given to him by another member.

On August 2, 1993 all the seven members of the group with Ram Lakhan Singh Yadav at the head formally joined the Congress, raising the strength of the Congress party in Lok Sabha to 257 still short of an absolute majority by 10 in a House of 533. It was to be considered a merger for purposes of the Anti-defection law. Ajit Singh described the ruling party's decision to admit the seven defectors as "mischievous" and "patently illegal". He said that the Prime Minister had "sullied his image by managing a majority in Parliament by hook or crook". Even within the Congress, there was considerable resentment on the decision. Arjun Singh asked his party not to appear even remotely to make a "mockery" of the anti-defection law and become its beneficiary.

On the other hand, the Prime Minister himself was reported to have described Ram Lakhan Singh Yadav as the 'saviour' of his Government. Commenting on the remarks by Arjun Singh and Rajesh Pilot, he was said

---

2. The Hindustan Times, New Delhi, July 30, 1993 p.12
to have retorted that but for the seven saviours neither he nor Arjun Singh could have remained ministers of his Government.

We will analyse the concept of merger and the present instance as to whether it is protected by the Constitution in Chapter IV.

**The Fourth Major Group Defection from Janata Dal**

On December 30, 1993 ten of the thirteen Janta Dal (A) M.P.'s led by Ajit Singh defected to Congress raising the strength of the Congress Party to 267 (including the Speaker) in an effective House of 528 with 16 vacancies. Thus, the Congress acquired a slender majority. The members who finally made it possible were: Ajit Singh, Satpal Singh Yadav, Surya Narain Yadav, Harpal Panwar, Rajnath Sonkar Shastri, Arjun Yadav, Ram Nihore Rai, Ram Badan, Shiv Sharan Verma and Ram Avadh. With more than two third members of the J.D(A) joining in the move, it was described as a merger for purposes of the Anti defection law.

**The Fifth Major Group Defection from Janata Dal:**

"On June 21, 1994 the Janata Dal (B) underwent a major split with 14 of its 39 members in Lok Sabha raising the banner of revolt against the leadership-particularly of the Ram Vilas Paswan, Sharad Yadav and Laloo Prasad Yadav troika. This was the fifth break up in the Janata Dal Parliamentary Party. The rebels who formed a separate group included prominent names like those of George Fernandes, Nitish Kumar, Rabi Ray, Chanderjit Yadav, etc."

"The Indian Express, New Delhi, December 31, 1993."
be the real Janata Dal. George Fernandes alleged that upstraitism and coteriesm in the Janata Dal were the ultimate causes for the split. The upstarts overreached themselves and in the process they destroyed the party.

On June 28, 1994, the break away group elected George Fernandes as the leader of their real Janata Dal as Bommai said that all the 14 rebel MPs stood expelled from the Janata Dal (B). Chandrajit Yadav and Syed Shahabuddin were elected as the Leader and Deputy leader of the new parliamentary party. The new Janata Dal was given the name Janata Dal (G). On July 18, 1994, Janata Dal (G) was reported to have been recognized by the Lok Sabha Speaker as a separate group in the House and assigned a block of 14 seats.

XV. State Legislatures and defections

In the State legislatures also the defection was invoked and legislators have defected without any principle only for the sake of joining the ruling party:

GOA Legislative Assembly

On March 31, 1993, the Supreme Court ruled that Chief Minister Ravi S. Naik and two of his cabinet colleagues Ratnakar Chopdekar M. and Sanjay Bandekar stood disqualified under the Anti Defection Law by the orders of Speaker Surendra Sirsat.V, on February 15, 1991, that the revocation of the disqualification

5. The Times of India, New Delhi, June 22, 1994.
orders on March 7-8, 1991 by Acting Speaker Simon Peter D'Souza was null and void because even the Speaker himself did not have the power to review his own disqualification order, and that the proceedings against the Speaker's decision could be filed before the High Court under Article 226/227 of the Constitution of India.

Meanwhile, in view of the directions issued by the Hon'ble Supreme Court, the Governor of the State of Goa asked the Chief Minister Ravi Naik not to take any major or policy decision till he was cleared by the High Court. On 14 May, 1993, the Goa bench of the Bombay High Court also upheld the disqualification of Mr. Naik and the other two Ministers. The court felt that the Chief Minister had failed to adduce evidence to prove a split in the MGP. Soon thereafter, the Governor was reported to have asked Naik to resign.

In an Assembly of 40, the Congress (I) had only 20 members including the Speaker. Following the court decision of May 14, 1993 the Governor dismissed the two Ministers who stood disqualified from membership. Naik resigned on May 17, 1993.

On May 19, 1993, on an appeal by Naik and the two Ministers, the Supreme Court ordered a partial stay of the operation of the High Court judgement of 14 May. Naik could not remain Chief Minister or Minister but he could continue as a Member till the appeal was finally disposed of.

---

7. *The Times of India, New Delhi, April 1, 1993.*
On June 14, 1993, the Goa Bench of the Bombay High Court admitted a petition for the disqualification of four Congress Ministers.

On June 15, 1993, a citizen, Atmaram Parab filed a petition in the Goa Bench of the Bombay High Court for the disqualification of six MLAs of the Goa People's Party. It was argued that a petition had been filed with the Speaker in January, 1992 but even though 17 months had passed, no decision had been taken by the Speaker. All these six MLAs had defected from the Congress in March, 1990 with the then Speaker Dr. Barbosa to form the Goa People's Party. Five of these MLA's were readmitted to the Congress in May, 1993.

On February 9, 1994 the legal battle ended when the Supreme Court finally quashed the disqualification of Naik and upheld his continued membership of the Assembly with the bars to his becoming a Minister or Chief Minister removed.

On 1 April 1994, 5 Ministers of Chief Minister Dr. W. De. Souza's Cabinet in Goa sent letters of resignation to the Congress President, Shri P.V. Narsimha Rao. On April 2, 1994, in a surprise development and in an exercise of powers by the Governor Bhanu Prakash Singh, the De Souza Ministry was dismissed and Ravi S. Naik was installed as Chief Minister. One of those who had resigned was named as Deputy Chief Minister and the other four were also included in the Council of Ministers. The question of the unprecedented misuse of powers by the Governor was reportedly discussed between the President of India and the Prime Minister for an hour. In a day of fast moving developments, Governor Bhanu Pratap Singh was asked to resign. He submitted his letter of resignation.
resignation on April 3, 1994. The President accepted it. Kerala Governor, Shri Rachaiah was sworn in to hold additional responsibilities for Goa until other arrangements were made.

Shri Ravi Naik was persuaded to resign. He sent his resignation on April 4, 1994. The Congress Legislature Party in Goa met to elect its new leader but decided to leave the decision to the Congress President. Shri Rao decided in favour of reinstating De Souza. The latter was sworn in on April 8, 1994.

**Himachal Pradesh Legislative Assembly.**

On September 18, 1993, seven MLAs from Janata Dal, Samajwadi Janata Party and Himachal Congress defected to Congress (I). The Congress strength was 16 in a House of 60 rose to 23.

**Uttar Pradesh Legislature**

The CPI presence in the U.P. Legislative Council came to an end when on March 4, 1994, its lone member in the Legislative Council Ram Chandra Baksh Singh, joined the Samajwadi Party led by Mulayam Singh Yadav.

One of the three CPJ MLAs and Leader of the Party in the Vidhan Sabha, M.A. Mitrasen also left the CPI, first to claim a split in the party and form a separate group (Samajwadi party) and then he merge his group in the Samajwadi Party. The same day, in the Vidhan Parishad, of the 13 Janata Dal members, seven informed the Chairman of their constituting themselves into a separate party to be called "Pragatisheel Janata Dal". The
the Vidhan Parishad, of the 13 Janata Dal members, seven informed the Chairman of their constituting themselves into a separate party to be called "Pragatisheel Janata Dal". The Chairman Legislative Council accepted the split in the Janata Dal and recognized the new party. Some three hours later, of the remaining six members of the party, another two parted company and formed a third group called the 'Krantikari Janata Dal'. This was also recognized by the Chairman as a separate Party. Again the same day, the one member Janata Dal (Samajwadi) announced its merger with B.J.P.

On March 24, 1994 the 27 Member Janata Dal in the U.P. Vidhan Sabha also split formally with 10 of its members forming the Samta Group. The Speaker recognized the new group and also fixed a time limit by which any other Janata Dal members wishing to join the Sameta Group could inform the Speaker. On March 30, 1994 the Samta Group with all its 10 legislators merged in the ruling Samajwadi Party.

What remained of the Janata Dal with its 17 members in the Vidhan Sabha faced another split when on June 24, 1994, 7 of them formed a Samata Group and then merged it with Samajwadi party. Again, on June 29, 1994 in the same fashion 4 of the 10 remaining Janata Dal members left the party but this time, they joined the Congress raising its membership from 28 to 32. The four were Ajit Singh supporters.

---

8. The Hindustan Times, New Delhi, April 1, 1994.
On July 7, 1993, two members of the BJP broke away from the party claimed a split and formed a new party called BJP (Punjab). The Deputy Speaker allotted them separate seats in the House. It is important that Deputy Speaker has acted as Speaker under the Tenth Schedule. It is important to note that the split in the BJP Legislature Party was recognised by the Deputy Speaker of the Punjab Legislative Assembly, however such an action was resented by the BJP itself after more than three years when the Deputy Speaker of the Gujarat Legislative Assembly recognised on September 3, 1996, the Maha Gujarat Janata Party which was formed by the dissident BJP Legislators in the leadership of Shri Dilip Parikh and the Governor after imposition of the President rules in the State of Gujarat has invited the leader of Maha Gujarat Janata Party, Shri Shanker Sinh Vaghela.

Haryana Legislative Assembly:

On September 3, 1993 the 11 member Haryana Vikas Party under the leadership of Chowdhury Bansilal was split when four of its MLAs Amar Singh Dhanak, Dharampal Singh, Peer Chand and Lahri Singh formed a new party HVP(A) under the leadership of Amar Singh Dhanak. The group requested the speaker for recognition as a separate legislature party and allotment of separate seats in the House. The request was acceded to. Later on, the HVP(A) was merged with the Ruling Congress (I) Legislature Party.10

10 The Tribune, Chandigarh, September 6, 1993, also see Annexure D: The Haryana Legislative Assembly (Disqualification of Members on Ground of Defection) Rules 1986.
Sikkim Legislative Assembly:

18 of the 31 ruling Sikkim Sangram Parishad members in a House of 32 revolted against their leader and Chief Minister, Nar Bahadur Bhandari. They elected Sanchaman Limboo, former health Minister as their leader. The lone opposition (Sikkim Democratic Front) member also pleaded his support to Limboo. The rebels included 7 members of the Bhandari Cabinet and the Speaker himself.

On May 7, 1994, the rebels, all stationed in New Delhi, expelled Bhandari from SSP while the Chief Minister in Gangtok sacked the 18 party rebels. The split was complete. The Governor asked Bhandari to prove his strength on the floor of the House by May 17, 1994. Bhandari lost to the rebel SSP(S) led by Limboo getting 16 votes and Bhandari 14. On May 18, 1994 Limboo was sworn in as the new Chief Minister along with eight other Ministers. The Governor asked him to prove his majority on the floor of the House which he did on June 6, 1994. The Ministry was later expanded to 13.

In swift moving developments, on June 17, 1994 the one month old Limboo Ministry was faced with a serious crisis when 12 of the 32 legislators under Bhandari's leadership resigned their membership of the Assembly. Two Ministers and another MLA also resigned. The lone Sikkim Democratic Front member, Pawan Kumar Chamling and his close associate another MLA, T. M. Rai submitted their resignations taking the tally of resignations to 17.

---

On June 27, 1994 Chief Minister Limboo formally announced the merger of his SSP(S) with Congress (I). He named his 12 member council of Ministers as the Congress Government. The position in the middle of July, 1994 was that with the resignation of 17 members, the effective strength of the 32 members House was reduced to 15 only and with four ministers also having resigned, the strength of the 13 member council of Ministers had come down to 9 only. Chief Minister had the support of 14 members in the House. The former Chief Minister Bhandari and the SDF member Chamling were doing their best to build pressure for the imposition of President's Rule. While all this was happening, some petitions seeking disqualification of some defecting members including Ministers were pending with the speaker. A petition was also filed in the Sikkim High Court against the Speaker having taken extraordinary long time to deliver his decisions.

On July 22, 1994, the Speaker announced his decisions on the petitions pending before him. He upheld the split in the party and, therefore, found that the members petitioned against could not be disqualified. The Speaker accepted the contention of two members that they were forcibly detained at the residence of the then Chief Minister and could not therefore join the Limboo group earlier.

MANIPUR Legislative Assembly:

On July 1, 1995, nine MLAs, including five Ministers, withdrew their support to the Rishang Keishing Ministry and

extended their support to the Opposition leader Shri R.K. Ranbir Singh. The Governor, Shri O.N. Srivastava dismissed four Ministers from the Cabinet on July 3, 1995. They are Sarvashri Gengumei Kamei, Basantakumar Singh, Thoiba Singh and Samuel.

On July 31, 1995 the Speaker, Shri W. Nipamacha Singh disqualified five MLAs under the provisions of the anti-defection law. Later in the day, the House negatived a no-confidence motion in the Keishing Ministry13.

In another development, the Speaker, Shri W. Nipamacha Singh said in an assembly Bulletin that the lone BJP legislator Shri E. Kunjeshwar Singh had submitted a petition declaring that the original BJP had split. The Speaker said that he had recognised the newly formed Manipur BJP under the leadership of Shri Kunjeswar Singh.

In another Bulletin, the Speaker said that the CPI legislator Shri Irabot Singh had submitted a petition stating that there had been a split in the two member party. The speaker then recognised the newly formed Manipur Communist Party under the leadership of Shri Irabot Singh14.

SAMATA PARTY:

On November 12, 1995, Shri Nitish Kumar was suspended from the Samata Party for attending the BJP national convention in violation of the party's directive. On November 19, 1995, the

---

14. ibid
Samata Party Parliamentary Group leader Shri Chandrajeet Yadav suspended the Samata Party President Shri George Fernandes from the Parliamentary Group. Later, Shri Syed Shahabuddin assumed charge as the acting President of the Party. On November 20, 1995, Shri George Fernandes expelled Shri Syed Shahabuddin and Shri Chandrajeet Yadav from the primary membership of the party.

ANDHRA PRADESH Legislative Assembly:

On October 2, 1995, Shri B. Janardhan, M.L.A. who had been supporting the chief minister, Shri N. Chandrababu Naidu, rejoined the Telugu Desam led by Shri N. T. Rama Rao.

On October 6, 1995, Shri Rama Rao expelled the Speaker of the State Legislative Assembly, Shri Y. Ramakrishnudu from the Telugu Desam for anti-party activities.

On October 10, 1995, Shri D. Venkateswara Rao, MP and 16 MLAs who had sided with Shri Chandrababu Naidu, rejoined the Telugu Desam led by Shri Rama Rao.

On August 16, 1995, the ruling Telugu Desam party suspended eight MLAs for their role during the elections to the District Central Cooperative Banks and the District Cooperative Marketing Society.

---

16 ibid
On August 24, 1995, 152 MLAs belonging to the ruling party, under the leadership of the Finance Minister, Shri Chandrababu Naidu, passed a resolution calling upon the State Governor not to honour any request from the Chief Minister Shri N.T.Rama Rao to dissolve the State Legislative Assembly.

On August 25, 1995, on a communication from the Governor, Shri Krishna Kant to verify the signatures of those MLAs who rallied round Shri Naidu, the Speaker Shri Y.Ramakrishnudu took a head count wherein 163 MLAs certified their support to the Finance Minister. Meanwhile, the Chief Minister called on the Governor and recommended the dissolution of the State legislative Assembly. On August 26, 1995 the Governor asked Shri Rama Rao to prove his majority on the floor of the House by August 31, 1995.

The Speaker, Shri Y.Ramakrishnudu recognised Shri Chandrababu Naidu as the Leader of the Telugu Desam Legislature Party on August 29, 1995. Shri Naidu was unanimously elected President of the Telugu Desam party at a General Body meeting on August 30, 1995. Shri N.T.Rama Rao resigned from the office of the Chief Minister on August 31, 1995.

Shri Chandrababu Naidu was sworn in as the Chief Minister on September 1, 1995. The Chandrababu Naidu Government won vote of confidence in the State legislative Assembly on September 7, 1995.  

GUJARAT Legislative Assembly

On September 27, 1995 the BJP dissident leader, Shri Shankar Sinh Vaghela called on the State Governor, Shri Naresh Chandra and submitted a list of 47 MLAs supporting him. He also claimed that another 22 MLAs owed allegiance to him and staked claim to form a new Government. The Chief Minister, Shri Keshubhai Patel urged the Governor to convene a brief session of the State Legislative Assembly so as to enable him to prove his majority on the floor of the House. On September 29, 1995, the BJP expelled Shri Vaghela from the party for six years. On September 30, 1995, the Governor asked Shri Keshubhai Patel to prove his majority in the State Legislative Assembly on or before 7 October. Later on the dissident move was resolved by reconciliation and the problem was sorted out.

BIHAR Legislative Assembly

On October 30, 1995, Shri Taslimuddin, MLA and Shri Muzaffar Hussain, MLA, belonging to the Samajwadi Party joined the Janata Dal. On November 11, 1995, Shri Ram Swaroop Paswan, MLA and Shri Vishnu Prasad Kushwaha, MLA, belonging to the Samata Party, joined the Janata Dal. Thus split and merger has practically legalised the defection.

On December 21, 1995, the JMM(M)MLA, Shri Saba Ahmad and the Bihar People's Party MLA, Shri Vijay Mandal joined the Janata Dal. The provisions of the Tenth Schedule has been used to protect the defectors in the name of split and merger.
HARYANA Legislative Assembly:

On 1st November, 1995, the Rashtiya Samajwadi Janata Party of former Chief Minister Chautala announced the resignation of all the 16 of its members from the State Legislative Assembly in protest against the alleged failure of the Bhajan Lal Government in safeguarding the interests of the State. The resignations were accepted by the Speaker on 2nd November, 1995.

Split in Kerala Congress (B):

On December 1, 1995, the Kerala Congress (B) led by Shri R.Balakrishna Pillai formally split with one of its two MLAs. Shri Joseph M.Puthussery holding a meeting of his supporters and electing Shri O.V.Lukose as the Chairman.

KARNATAKA Legislative Assembly

On August 28, 1996 Seven Janta Dal members of the Legislative Council of Karnataka which had only 15 members of Janta Dal in the Upper House joined Rashitriya Nav Nirman Vedike. Now only eight members are left with the Ruling Janta Dal. They have not attracted the anti defection law and their split is protected by the Tenth Schedule. The seven who joined with Ram Krishna Hedge in the Council were K.Siddalingaiah, N.Thippanna,

\[19\] ibid, p.66.
On August 18, 1996, Maha Gujarat Janta Party submitted a list of 46 MLAs led by Mr. Dilip Parikh to the Governor Shri Krishan Pal Sigh; The Maha Gujarat Janta Party has claimed that 46 MLAs out of 120 BJP Members in a 180 Members House are one third of the Bhartiya Janta Party's Legislature Party and they have successfully splitted the BJP Legislature Party under the Tenth Schedule of the Constitution.

The Governor has requested the Speaker of the Legislative Assembly for the verification of the 46 MLAs. The Assembly Secretariat verified 45 signature as genuine but the ailing speaker, Harish Chandra Patel did not formally recognised the split as he was not in a position to undertake any assembly work.

The question arises whether the Presiding officer has any discretion whether to recognise a split or not, or whether a recognition in such a case is his constitutional duty under the Tenth Schedule.

Finally the Assembly session was called on September 3, 1996. Since the speaker Shri Patel was seriously ill and could not attend the session, Deputy Speaker of the Legislative Assembly

---

1. The Hindustan Times, New Delhi, August, 20, 1996.
2. The Hindustan Times, New Delhi, August, 29, 1996.
Shri Chandu Bhai Dabhi presided over the Session and performed the function as acting Speaker.

The Deputy Speaker has rightly recognised the 46 Members Maha Gujarat Janta Party in the Legislative Assembly which was led by Mr. Dilip Parikh in the House on September 3, 1996.

The B.J.P. Claimed that the 18 members have deserted the 46 members dissident group and it has now a strength of 94 MLAs instead of 74 MLAs in a House of 180 Members and the MGJP has only 28 members in the House.

Interestingly, the BJP has not splitted the MGJP after it has been verified that the signatures were genuine if the BJP had the support of the 18 dissident MLAs, it would have again requested the Speaker that Maha Gujarat Janta Party has been splitted and afterward the 18 Members would have constitutionally joined the BJP but the BJP has not taken such a course and just sing slogans like a layman who does not have any knowledge of Tenth Schedule of the Constitution.

On September 18, 1996 the Legislative Assembly again met and the agenda was only to condole the death of the Late Speaker of the Legislative Assembly, Shri Harish Chandra Patel and others and the next day was fixed for confidence vote/majority test of the Suresh Mehta led BJP Government. Unfortunately, the Deputy Speaker was hospitalised on 17-18 September, 1996 (night). B.J.P. legislator out of the panel of Deputy Speakers presided over. After

---

The Hindustan Times, New Delhi, September 4, 1996.
the condolence, the Chief Minister moved the motion of confidence which was not scheduled on the agenda. The opposition opposed such a move. The Congress and Maha Gujarat Janta Party Legislators were beaten up and some have suffered fracture even. For the first time in the Constitutional History the Chief Minister was heard saying call plain cloth personnel and forget the Constitution.

On September 19, 1996, the Central Government on receipt of the Governor's report which recommended Presidents Rule in the State Consequent to the "breakdown" of the Constitutional machinery, imposed President's Rule under Article 356 of the Constitution and kept the Assembly in suspended animation.

ARUNACHAL PRADESH legislative Assembly

Arunachal Pradesh Chief Minister, Gegong Apang floated a new party "Arunachal Congress" by splitting the Congress Legislature party on 18.9.1996 in a 60 members House which has effective strength of 58 as two seats are vacant. His new party which is backed by 41 MLA (originally belong to the Congress (I) Party) which is left with only 4 MLAs.

1. The Hindustan Times, New Delhi, September 19,1996; Also see the Times of India New Delhi, September 19,1996; The Hindu, Gurgaon September 19,1996.
2. The Hindustan Times, New Delhi, September 20,1996.
On September 19, 1996, the Speaker of the Arunachal Pradesh Legislative Assembly recognised the split and the newly floated party, 'Arunachal Congress'.

On 21 September 1996, leader of the newly formed Arunachal Congress party leader Gegong Apang was sworn in as the Chief Minister.

DEVELOPMENTS ABROAD

ANGOLA Defections

New Vice-President: On 11th August, 1995, former rebel leader Mr. Jonas Savimbi abandoned the rebellion he led for 20 years and joined the Government as Vice-President in charge of Economic Affairs.

We have analysed in this Chapter the concept of defection as to what is defection and its origin in the Parliamentary Democracy in the foreign countries particularly United Kingdom, Australia and America. After this we have tried to trace the history of defection in the Indian Parliamentary Democracy. Even we have tried to examine the ancient defections. We have further examined the Committee on Defections, the Constitution (32nd Amendment) Bill, 1973, and subsequent Bill known as Constitution (48th Amendment) Bill, 1978, and the Constitution (52nd Amendment) Act, 1985 and the instances of defections even thereafter.

The Hindustan Times, New Delhi, September 22, 1996; Also see the Indian Express, New Delhi, September 22, 1996; The Times of India, New Delhi, September 22, 1996.