CHAPTER I

NATURE AND DEFINITION OF DEFECTION

After a brief discussion of the historical background, of the defection in India and Abroad now we will examine the problem of defection. In the Indian Political System, as we all know that the Indian Democracy which came into being on Independence of the country from the colonial Ruler, on August 15, 1947.

The Constitution of India was enacted by the Legal Luminaries of the great India. No less than a man Dr. B. R. Ambedkar who was well versed with the Constitutional and legal aspect of the World, was the Chairman of the Drafting Committee of the Constitution. The Drafting Committee has deliberated upon the different aspect of the Constitutional Law and other legal issues and finally the People of India resolved to Constitute India into a 'Sovereign Socialist Secular Democratic Republic'. The Preamble of the Constitution of India itself is the guide for Constitutional interpretation. The Constitution was given to themselves by the People of India on November 26, 1949 and India was Constituted as Republic of India on January 26, 1950.

The defection has been threatening the Indian Democratic system when the Political stalwarts even changes political parties without any basic principle or ideology. We have seen that even the Chief Ministers and Central Ministers have defected to gain power in the Political system. Haryana Chief Minister Bhajan Lal
defected with his party to Congress (I) after Mrs. Gandhi came to power in 1980.

Chief Minister Prakasham of Andhra Pradesh, Chiman Bhai Patel of Gujarat, Shanker Sinh Vaghela another Chief Minister from Gujarat have defected from their political parties to from the Government of the ruling party at centre. Mulayam Singh Yadav of Uttar Pradesh and Ajit Singh of Uttar Pradesh have defected not less than five six times in the last five six years. As they have change the names of their political parties frequently.

Even Om Prakash Chautala of Haryana, G.K. Moopnar, P. Chidambaram, M. Arunchalam, Col. Ram Singh, Birender Singh, Bansi Lal, Jagga Nath, Banarshi Dass Gupta, Amar Singh, Inder Singh Namdhari (BJP leader defected to Janata Dal in Bihar Assembly) have crossed the floor. We should not surprised to hear a name as defector. We know that after Emergency and during Emergency there was a wholesale change of party and even the party President have changed the Party. V.C. Shukla was Minister in the Rajiv Gandhi Cabinet then defected and became Minister in the Chander Shekhar as Ministry and again switched his loyalty back to the Congress and became Minister in the Narsimha Rao Government.

For the operation of the Anti Defection law, it is necessary to understand the Politics of defection as to what was the opinion of the Committee on Defection and the subsequent position.
A) **Definition of Defection**

In this part we will examine the definition of Defection for understanding in a better way the politics of defection:

1) **Defector**

The definition of the term 'defector' recommended by the Committee on Defections was as follows:

"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".

If we analyse the above definition, the Committee has termed a legislator or Parliamentarian as 'defector' if he was elected on the reserve symbol of any political party and he, at his own, renounces his allegiance to such political party.

2) **Defection**


Constitution (32nd Amendment) Bill, 1973 lapsed due to dissolution of the House of the People.
clause (2) to the aforesaid articles. Clause (2) which was proposed to be substituted to Article 102 is reproduced hereinbelow:-

"(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".

However, Constitution (48th Amendment) Bill, 1978 which was introduced on August 28,1978 was hurriedly withdrawn by the Janta Party Government. According to the provisions in the Constitution (48th amendment) Bill,1978.

" if twenty five percent or more members of a political party in a House resign en masse or disobey the party whip and form a new political party, or a separate group, they would not be dubbed as defectors".

Thus, it seems that for the first time, a distinction was sought to be made between defection and split in a party. The basic presumption behind the proposed distinction between individual and group defections seems to be that latter are based on honest ideological differences, or on disagreement on principles or policy and are not in any way motivated by considerations of personal gain in terms of money, office or power etc.

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3. Paragraph 3 to the Proposed tenth Schedule.
4. Sharma, Mool Chand, 'Politics of Defection and Democracy', (1975) 13 JCPS 328,342; also see Diwan, Paras, 'Aya Ram Gaya Ram: The
A close examination of group defections, has made it clear that ideology or honest programmatic differences have been the least significant motivations. In post fourth general election period several defectors adorned the seat of Chief Ministership following the group defections led by them. Except in situations of marginal majorities, it is relatively more difficult for a lone defector to bargain with an organized party.

Defection may be defined as abandonment of loyalty, duty or principle, or of one's leader or cause. In parliamentary political life, the term has come to connote change of party affiliation or allegiance by a member of a legislature.

The traditional term used for the definition of defection has, however, been floor crossing which had its origins in British House of Commons where a legislator was supposed to have changed his party allegiance when he crossed the floor and moved from the Government to the opposition or Vice Versa.


Hornby A.S, Oxford Advanced Learner's Dictionary; Fifth Edn.1996 P.304- Defect has been defined as to leave a political party; cause, country, etc., and go to another'...

Defection has been defined as 'Discontent will lead to further defection from the party.
The phenomenon of defection was not something altogether unknown to the older democracies like Great Britain. Political Stalwarts like William Gladstone, Joseph Chamberlain, Winston Churchill and Ramsay Mac Donald were known to have changed their party allegiance at one time or another, some of them even more than once. Likewise in Australia, Canada and the U.S.A. there had been instances of politicians defecting from one party to another. Indian Politics had been suffering the virus of defection right from the pre independence Central Legislative Assembly days.

To understand the concept of anti Defection Law it is necessary to understand the term 'House' in relation to the Tenth Schedule as anti defection law is applicable only in case of a conduct of

Defector has been defined as 'a high ranking defector seeking political asylum'.

Also see Burton, William C., 'Legal Thesaurus' (Deluxe Edn.1980) p.141. 'Defect,(Verb) has been defined as

'abandon allegiance, abdicate, abscond, apostasize, backout, be disloyal, betray, breakaway, break fealty, break with, cast off, change sides, default, demit, depart, desert, disavow, disobey, disown, forsake, leave, leave unlawfully, multiny prove treacherous, quit, rebel, reject, renege, renounce, repudiate, resign, revolt, run away, secede, transfer, violate one's oath, withdraw one's support'.

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the Legislator in the House. The Presiding Officers of the Houses of Parliament, of State legislature have been conferred with the power of adjudication on the issue of defection. The Speaker of the Lok Sabha or Legislative Assembly, as the case may be, or the Chairman of the Rajya Sabha or Legislative Council of a State, as the case may be, have been empowered to decide the question of defection.

B. **House of Parliament**

The Constitution of India has created two Houses of Parliament: the lower House is known as House of the People and the upper House is known as Council of States.

i) **Powers of Parliament**

The Constitution of India, republican and federal in character, embodies the salient features of the Parliamentary system. It provides for a Parliament for the Union consisting of the President and the two Houses, namely, Council of States which is known as (Rajya Sabha) and House of the People which is known as Lok Sabha. Lok Sabha has supremacy in financial matters. Union executive which is drawn from both Houses of Parliament and collectively responsible to the Lok Sabha ensuring thereby an intimate relationship between the Union Executive and Parliament.

7. Paragraph 1, in its clause (a) has defined "House" as follows:

"a) House" means either House of Parliament or the Legislative Assembly or as the case may be, either House of Legislature of a State;"
A number of States have basic provisions parallel to those of the Union in respect of the Executive and Legislatures of the States. Head of the Union is called as the President of India who act with the aid and advice of the Union Council of Ministers. The rule of law; independent judiciary and a civil service, which are politically independent are provided under the Constitution of India.

The Parliament in India is not a sovereign body-uncontrolled and with unlimited powers in the same sense, as the British Parliament is. It functions within the bounds of a Written Constitution. Its legislative authority is hedged in by limitations in a two-fold way by the federal distribution of powers between the Centre and the States and by the incorporation of a Code of Justiciable fundamental rights in the Constitution, and provision for judicial review which means that all laws passed by the Parliament other than Constitution Amendment Acts which are passed in exercise of the Constituent powers of Parliament which must be in conformity with the provisions of the Constitution and are liable to be tested for constitutionality by an independent judiciary. All these limitations tend to qualify the nature and extent of the authority and jurisdiction of Parliament.

Boardly speaking, Parliament has exclusive jurisdiction over the subjects in the Union List, the State Legislatures over those subjects in the State List, and both may legislate in the

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concurrent list 9. Residuary powers of legislation vest in Parliament i.e. matters not enumerated in the Concurrent list or the State List including the power of making any law imposing a tax not mentioned in either of those Lists, lies with the Parliament 10. Parliament, in addition, may legislate with respect to any matter for any part or the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List 11.

Parliament may enter the State List by invitation as well if two or more State Legislatures consider it desirable that any of the matters within their exclusive legislative competence should be regulated by parliamentary legislation and pass resolutions to the effect, Parliament can undertake the necessary legislation 12.

It is also noteworthy that some of the entries in the Union List themselves empower Parliament to take over to itself, by making the requisite declaration by law, certain spheres and subjects from the State field 13.

ii) Delegation

The Privy Council has examined the question that legislative power cannot be delegated which is said to be embodied

9. Article 246 read with Seventh Schedule to the Constitution of India.
10. Article 248 read with Seventh Schedule to the Constitution.
11. Article 246(4) Constitution of India.
12. Article 252, Constitution of India.
in the well known maxim 'delegatus non potest delegare' which means a delegated authority cannot be re delegated. The Privy Council observed:

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it and it can of course do nothing beyond the limits which circumscribe these powers. But when acting within whose limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has intended to have, plenary powers of legislation as large, and of the same nature, as those of Parliament itself"14.

Dicey dealing with the powers of the British Parliament with reference to the Septennial Act, states as follows:--

"That Act proves to demonstration that in a legal point of view, Parliament is neither the agent of the electors, nor in any sense a trustee for its constituents. It is legally the sovereign legislative power in the state, and the Septennial Act is at once the result and the standing proof of such Parliamentary Sovereignty"15.

The Indian Constitution has specifically distributed the powers between the Union Parliament, the State Legislature and a Concurrent list is also appended as list III to the Seventh Schedule. No Legislature can legislate in the area specified for the other Legislature. The Legislative powers cannot be delegated by the Legislature except in a situation when there is a gap in such a case some time Executive have been conferred a power to fill that gap and in doing so the delegate cannot over ride its power because such a power is a limited power for specific purpose and is not uncontrolled.

iii) Separation of Powers in U.K.

Doctrine of "separation of powers" is said to have originated from Aristotle, which was given great prominence by Locke and Montesquieu. The doctrine may be stated in Montesquieu's own words:

"In every government there are three sorts of powers, the legislative, the executive in respect to things dependent on the law of nations; and the executive in regard to matters that depend on the civil law. When the legislative and the executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may rise, lest the same monarch or Senate should enact tyrannical laws, to execute them in a tyrannical manner".16

The learned Author has further said:

"Again, there is no liberty, if the judiciary power be not separated from the legislative and the executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control for the judge would be then the legislator. Were it joined to the executive power, the judge might behave with violence and oppression. There should be an end of everything, were the same man or the same body, whether of the nobles or of the people, to exercise those three powers that of enacting laws, that of executing the public resolutions, and of trying the causes of individuals".17

16. infra
17. Pritchard, J.V. Montesquieu's spirit of laws' Volume (I) 1914 (Ed. P.163, also see In re the Delhi laws Act, 1992 etc. (1951) SCR 747, 809.
The English laws are made by the Parliament which is sovereign and crown is a necessary party to Legislation. All laws, are enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in Parliament assembled and by the authority of the same, and a bill does not become law until it has received the royal assent. The crown is therefore a necessary party to legislation and neither House of Parliament, whether acting alone or in conjunction with other House, has any power of legislation without the Crown.

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18. Measures passed by the General Synod of the Church of England are governed by Special enactment.

19. R.V.Middlesex JJ(1831) 2B and Ad.818, also see the enacting clause of any statute. The alternative form prescribed by the Parliament Act, 1911, Section 4 (1); The Parliament Act, 1949, Section 2 (2); in cases where the opposition of the House of Lords is disregarded is,

"Be it enacted by the King's most excellent Majesty, and by and with the advice and consent of the commons in this Present Parliament assembled, in accordance with the provisions of the Parliament Acts, 1911 and 1949 and by authority of the same".

Thus, the Crown is necessary party to legislation in these cases also.

20. The Sovereign's right to refuse assent to Bills has not been exercised since 1707 and is contrary to the conventions of the Constitution. The Royal assent is also needed before an ecclesiastical measure to have the force of law.

Stockdale V. Hansard (1839) 9 Ad. & EL, 1., the authority of the House of commons was pleaded in justification of the publication of a parliamentary report containing a libel upon
Moreover, the crown cannot by proclamation or otherwise make or unmake any law on its own authority apart from Parliament, except in conquered or ceded colonies to which representative institutions have not been granted.

iv) Constituent Power

Besides the power to legislate on a very wide field, the constitution of India vests in the union Parliament to the constituent power, or the power to amend the constitution. The scope of this power is very wide, limitless and uncontrolled. Parliament can amend in any way, i.e. by addition, variation, or repeal any provision of the Constitution and no court can question it on any ground whatsoever. Parliament may even amend provisions of the related article Article 368 which lays down the powers and the procedure for amending the Constitution of India itself.

No extra ordinary terms and conditions (e.g., ratification by a convention or at a referendum) fetter the exercise of this power. Barring the requirement of special

stockdale, but it was held that the House could not, by its resolution, alter the law so as to make defamatory matter non-libellous. The special statutory provision is made for the validity of the financial resolutions of the House of commons by the Provisional Collection of Taxes Act, 1968. Re Grazebrook exparte chavasse (1865) 4 De.G.J&Sm.655, p.662; also see 'Crown in Relation to Parliament; Halsbury's Law of England, 4th Edition Volume 8 Para 934 at p.601.
majority, ratification by State Legislatures in certain cases, as in the present legislation, and the mandatory assent by the President, a bill for the amendment of the Constitution follows practically the same legislative process as an ordinary piece of legislation.

Article 368 of the Constitution is reproduced herein below:

"368. Power of Parliament to amend the Constitution and procedure therefor:

(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation of repeal any provision of the Constitution in accordance with the procedure laid down in this article.

(2) An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting. (it shall be presented to the President who shall give his assent to the Bill and thereupon) the constitution shall stand amended in accordance with the terms of the Bill.

Provided that if such amendment seeks to make any change in-

(a) article 54, article 55, article 73, article 162 or article 241, or
(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I or Part XI, or
(c) any of the Lists in the Seventh Schedule or
(d) the representation of States in Parliament, or
(e) the provisions of this article.

the amendment shall also require to be ratified by the Legislatures of not less
Judicial Review is a basic feature of the Constitution of India. Therefore, any law or Constitutional amendment excluding judicial review would be unconstitutional.

v) Constitution of the House of the People

Now, we will examine the Constitution of the House of People and the Council of States as well as the Legislatures of the States.

The House of the people is known as the Lok Sabha which Consists of not more than 530 members chosen by direct election from the territorial

than one half of the States....by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) Nothing in article 13 shall apply to any amendment made under this article.

(4) No amendment of this Constitution (including the provision of Part III) made or purporting to have been made under this Article (whether before or after the commencement of section 55 of the Constitution (Forty Second Amendment) Act, 1976) shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

Note: Clause (4) and (5) were inserted in article 368 by section 55 of the Constitution (Forty second Amendment) Act, 1976, This Section has been declared to be invalid by the Supreme Court in Minerva Mills Ltd. and others Vs. Union of India and others (1980) 2 S.C.C.591.
Constituencies in the states\(^4\) and not more than twenty members to represent the Union Territories\(^5\).

The limit on the maximum number of members chosen directly from territorial constituencies in States may be exceeded if such an increase is incidental to reorganisation of States by an Act of Parliament\(^6\).

vi) **Delimitation of Constituencies**

The delimitation of constituencies is done by the Delimitation Commission. Under the Delimitation Commission Act, 1952, (since repealed), the Commission was required first to publish its proposals in respect of the determination of numbers and then again in respect of the distribution of seats and delimitation of constituencies. After considering any objections and suggestions which it received in regard to them, the Commission was to determine the matters by one or more final orders. Each of the final orders was to be published in the Gazette and upon such publication, the order had the full force of law.

Under the Delimitation Commission Act, 1961 (also since repealed) the Commission was authorised by order to determine forthwith the number of seats in Lok Sabha on the basis of the latest census figures

\^[4]\text{Article 81(1) (a) of the Constitution of India.}
\^[5]\text{Article 81(1)(b) of the Constitution of India.}
\^[6]\text{Under the Constitution (Seventh Amendment) Act, 1956, the maximum number was fixed as 20. The maximum number which was increased to 25 by the Constitution (Fourteenth Amendment) Act, 1962 has again been decreased to 20 by the Constitution (31st Amendment) Act, 1973.}
and having regard to the constitutional provisions on the subject. The Commission was required to publish only the proposals for the delimitation of constituencies and after considering objections and suggestions received thereon to determine by one or more orders the delimitation of constituencies. Each of such orders had to be published in the Gazette and, upon publication, every such order had the force of law.

During discussion, the Delimitation Commission Bill, 1962, an amendment was moved by a member for omission of the word "full" from the expression 'full force of law' which was agreed to by the House of the People.

Under the Delimitation Act, 1972, the Commission was required to readjust allocation of seats in Lok Sabha on the basis of the latest census figures. In other respects the provisions made in the Act follow the pattern of the provisions contained in the Delimitation Commission Act, 1962. Delimitation of constituencies was first effected in 1952 and 1956. It was

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(1962) LSD, December 24, 1962, P.4205-08; also see as a result of amendments made in the First Schedule to the Representation of People Act, 1950, by the North Eastern Areas (Reorganisation) Act, 1971, the number of Members of Lok Sabha from States and Union Territories became 506 and 16 respectively. Since the increase in the number of seats allotted to States beyond the limit of 500 laid down in article 81 was incidental to reorganisation of States by a law made in exercise of powers conferred by Article 3 of the Constitution, representation of States in the Fifth Lok Sabha continued to be 506 without amendment of article 81.

See also Mangal Singh V. Union of India (A.I.R.1967 S.C.944) wherein the validity of the provisions of Punjab Reorganisation act providing that the membership of the Legislative Assembly of Haryana shall be below the minimum prescribed by article 170(1); i.e., 60 members, was upheld by the Supreme Court.

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again effected in 1961 under Section 7 of the Two Member Constituencies (Abolition) Act, 1961. The delimitation of constituencies was effected in accordance with the census of 1961 before the 1967 Fourth general elections. Again this was done in accordance with the census of 1971 and the Delimitation Commission completed its work (except in respect of the Union Territory of Arunachal Pradesh) before the 1977 general elections. The Delimitation of Parliamentary and Assembly Constituencies order, 1976, was made by the Election Commission on December 1, 1976.

Vii) Nominated Member

The President of India is empowered, if he is of the opinion that the Anglo Indian Community is not adequately represented in the House, to nominate not more than two members of that community to Lok Sabha.

viii) POLITICAL RESERVATION

To facilitate adequate representation of the Scheduled Castes and Scheduled Tribes, the Seats are reserved in the Lok Sabha for the Scheduled Castes and the Scheduled Tribes in almost all the States and some Union Territories. The delimitation Commission Act, 1952 provided that all parliamentary and assembly constituencies should be either single member or two member constituencies, wherever practicable seats should be reserved for the Scheduled castes or Scheduled Tribes in single member constituencies and that in every two member constituency one seat should be reserved either for the Scheduled Castes or for the Scheduled Tribes, as the case may be, and the other seat should be a general seat.

93. Article 331 of the Constitution of India
The two member constituencies were, however, not liked by the candidates. They had to cover double the area, canvass twice. The number of electors and consequently incur twice the expense, as compared to those candidates who stood for election from single member constituencies. From the administrative point of view also, these large two member constituencies were found difficult to manage. There was, therefore, demand for doing away with the double member constituencies and as a result, the 'Two Member Constituencies (Abolition) Act, 1961' was passed. The task of dividing each one of these constituencies into two compact and convenient single member constituencies and deciding which seat should be reserved for the scheduled castes or Scheduled Tribes, was given to the Election Commission.

A member of a Scheduled Caste or Scheduled Tribe does not forego his right to seek election to the general seat, merely because he avails himself of the additional concession of the reserved seat by making the prescribed declaration for that purpose.¹⁰

ix) Term of the House

Unless sooner dissolved, Lok Sabha continues for five years from the date appointed for its first meeting¹⁰ and no longer, the expiration of the period of five years operating as a dissolution of the House¹¹. However, while a Proclamation of Emergency is in operation, this period

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⁹. V.V. Giri Vs. D. Suridora AIR 1959 SC 1318.
¹⁰. Earlier to the enactment of the Constitution (44th amendment) Act, 1978, the Lok Sabha's term was five years which was restored.
¹¹. Article 83(2) of the Constitution of India, Originally, the life of the Lok Sabha was five years. It was raised to 6 years by the Constitution (42nd Amendment) Act, 1976.
may be extended by Parliament by law for a period not exceeding one year at a time and not exceeding in any case beyond a period of 6 months after the Proclamation has ceased to operate. The 5 year term of the Fifth Lok Sabha was to have normally expired on March 18, 1976. Having regard to the Proclamations of Emergency issued on December 3, 1971 and on June 25, 1975, which were in operation, the life of the Fifth Lok Sabha was extended first on February 4, 1976 by a period of one year and again on November 5, 1976 by another period of one year upto March 18, 1978.

x) Council of States

Article 79 of the Constitution prescribe that there shall be a Parliament for the Union and two Houses to be known respectively as the Council of States and the House of the People.

Council of States i.e., Rajya Sabha consists of twelve members nominated by the President\(^{12}\) and not more than two hundred and thirty eight representatives of the States and the Union territories\(^{13}\). The members nominated by the President consist of persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service\(^{14}\).

Rajya Sabha\(^{15}\) was duly constituted for the first time on April 3, 1952. It consisted of 216 members. Of these 12 members were

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\(^{12}\) Article 80(1)(a), Constitution of India.

\(^{13}\) Article 80(1)(b) Constitution of India.

\(^{14}\) Article 80(3), Constitution of India.

\(^{15}\) On May 14, 1954, Speaker Mavalankar announced that the House of the People would thereafter be known as "Lok Sabha". On August 23, 1954, the Chairman of the other House announced a similar decision changing the name of the Council of States to "Rajya Sabha" from that
nominated by the President. The remaining 204 members were
elected to represent the States. The representatives of State of the
Jammu and Kashmir were chosen by the President in consultation
with the Government of the State.

Rajya Sabha is not subjected to dissolution, but as nearly as
possible one third of its members retire as soon as may be on the
expiration of every second year in accordance with the provisions
made in that behalf by Parliament by law16. The term of office of
the members begins from the date on which the names of the
elected and nominated members are notified by the Government of
India in the Gazette17. The normal term of office of a member of
Rajya Sabha is six years18. However, a member elected or
nominated to fill a casual vacancy holds office for the remainder of
the term which his predecessor would have held19.

xi).  **STATE LEGISLATURES**

The Legislature is bicameral in five states of the Union, namely
Bihar, Maharashtra, Karnataka and Uttar Pradesh20 and Jammu and
Kashmir (by virtue of it own constitution). In other States, the
Legislature is unicameral which is known as Legislative Assembly.

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16. Article 83(1) Constitution of India.
17. Section 155, The Representation of People
Act, 1951
20. Article 168(1)(a), Constitution of India.
In those States which have bicameral Legislature the Upper House is known as Legislative Council and Lower House is known as Legislative Assembly.

Article 169 of the Constitution of India provides for the creation and abolition of the Legislative Council. The Lower House of the State i.e., Legislative Assembly which by resolution may recommend either of the two courses. Clause (3) of Article 169 of the Constitution of India lays down that a law for the creation or abolition of the Legislative Council shall not be deemed to be an amendment of the Constitution and, therefore, the procedure laid down in Article 368 for the amendment of the Constitution is inapplicable to such a law.

Article 168 of the Constitution of India lays down that there shall be a Legislature for every State which shall consist of the Governor and two Houses in case of the States of Bihar, Madhya Pradesh, Maharashtra Karnataka and Uttar Pradesh and one House in case of the other States. Of the two Houses, one shall be known as the Legislative Council and the other as the Legislative Assembly. Where there is only one House, it shall be known as the Legislative Assembly. Article 170 of the Constitution describes the composition of the Lower House or Legislative Assembly which shall be composed of members chosen by direct election. But seats will be reserved for the Scheduled castes and Scheduled

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1. A Legislative Council has been created in Andhra Pradesh by the Legislative Council Act, 1957 which was later on abolished by the A.P. Legislative Council (Amendment) Act, 1985.
Tribes. The Governor may, if he is of the opinion that the Anglo Indian Community needs representation in the Legislature of the States and is not adequately represented nominate one member of that community to the Assembly.

The reservation of seats and special representation shall cease after fifty years.

Article 171 of the Constitution describes the Composition of the Legislative Councils. The total number of members in the Legislative Council of a State Shall not exceed one third of the total number of members in the Legislative Assembly of that State. But the total number of members shall in no case be less than 40.

The composition of the Legislative Council is described in clause (3) of Article 171 which can be varied by a law of Parliament. Under Clause (3), the membership of the Legislative Council is not from territorial constituencies as in the case of the Assembly. It is by nomination, direct election, or by election from teachers and graduates Constituencies Of the total number of members of the Legislative Council of a state, one third are to be elected by Electorates consisting of members of municipalities, district boards and other local authorities in the state, one-twelfth are to be elected by electorates consisting of persons residing in the state who is at least three years graduate of any university in India or possess equivalent qualifications, one twelfth are to be elected by

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2. Article 332, Constitution of India.
3. Article 333, Constitution of India.
4. Article 334, Constitution of India, This article has been successively amended as originally, the period was prescribed as "ten years" and the same has been extended to Fifty years," but every time ten years at a time.
5. Article 171(1), Constitution of India.
electorates consisting of persons who have been engaged in teaching in educational institutions within the State, one third are to be elected by the members of the Legislative Assembly of the State from amongst persons who are not members of the Assembly and the remainder are to be nominated by the Governor in accordance with the provisions of clause (5)\(^6\) e.g. consisting of persons having special knowledge or practical experience in respect of literature, science, art, cooperative movement and social service\(^7\).

The normal duration of the Legislative Assembly is five years, but it can be dissolved sooner by the Governor on the request of the Chief Minister.

During the period a proclamation of emergency is in operation the life of Assembly can be extended by Parliament for a period not exceeding one year at a time and not exceeding in any case beyond a period of six months after the proclamation of emergency has ended.

The legislative Council shall be a permanent body, not subject to dissolution, but one third of its members shall retire on expiration of every second year.

C. PARTY

After examination of the House which means either House of Parliament or the Legislative Assembly, or as the case may be, either House of the Legislature of a State\(^8\). The Anti Defection Law

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\(^6\) Article 171(5), Constitution of India.


\(^8\) Paragraph 1(a) of the Tenth Schedule of the Constitution of India.
is applied on the basis of party affiliation. Hence, it is necessary to understand the party system.

The party system will explain as to the party has two wing, one as political wing and second as legislature party wing. "Legislature party" has been defined by the Tenth Schedule itself as follows:

(b) "Legislature party in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 3 or as the case may be, paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions".

A party has two organisational wings, one political wing and the another, legislature party wing. Now we shall examine the concept of Party which will make itself clear as to original political party which has been defined by the Tenth Schedule itself as follows:

(c) "Original political party" in relation to a member of a House, means the Political party to which he belong for the purposes of sub paragraph (1) of paragraph 2.

To understand the above concepts of the Legislature Party and the original Political Party we must understand the political party. Political activity in a society find its expression in an articulate manner through political parties which compete for political power by identifying with one group and differentiating from another. A

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9. Paragraph 1(b) of the Tenth Schedule of Constitution of India.
10. Paragraph 1(c) of the Tenth Schedule of the Constitution of India.
11. ibid.
party signifies partnership in a particular organisation and separation from others by a specific programme and leadership. A party is an effective intermediary which links social forces and ideologies to governmental institutions and is a connecting link between government and public opinion. It is a mechanism designed to solve the problem of bringing the new mass voters into the political community.

It is also a representative of social interest groups and as such, it not only clarifies, systematizes and express its ideology but also unites the individual with the community, enhances the voters participation in the competitive polity and tends to widen the area of his free choice in the selection of the rulers.

Representation is not only an instrument of manipulation but is also a means of political adjustment to Social pressures. The purpose of representation is to locate the combinations of relationships between parties and social bases which makes possible the operation of efficient government. Charles Merriam conceptualized as an alliance of substructures or sub coalitions as political party, e.g.,

"Of great significance in the composition of any political party are the numerous types of social groupings. These are fundamental in any scientific study of the political party, and too great emphasis cannot be laid upon them.....The practical politician is never guilty of the omission of the study of social groupings, but the students of politics have sometimes proceeded as if parties were working in the social vacuum"15.

ii) Political Activity

The Political Party is a social group, a system of meaningful and patterned activity within the larger society. It consists of a set of individuals populating specific roles and behaving as member actors of a boundaried and identifiable social unit. Goals are perceived by these actors, tasks are assigned for and by them, and communication channels are maintained. The party is, thus, one social organism. But the party is also a polity, a miniature political system. It has an authority structure, although the manner in which authority is graded and legitimated may differ considerably from other social groups. The party has distinctive patterns of power distribution. It has a representative process, an electoral system and sub processes for recruiting leaders, defining goals, and resolving internal system conflicts. Above all, the party is a decision making system, although, how "authoritative" the decision making process is remains a subject of inquiry.

The political party, thus, conforms to the common characteristics of social groups16.

16. Eldersveld, Samuel J. Political parties A behavioural Analysis, The university of
Herbert Simon has defined 'political party' as follows:—

"A group as a system of "interdependent activity, encompassing at least several primary groups and usually characterized...by a high degree of rational direction of behaviour towards end that are object of common acknowledgement and expectation"17.

iii) Party Structure

Political Party structures have certain common tendencies differentiating them from other social groups such as families, churches, labour unions, business firms, lodges. This is a proposition which can not be easily defined. In the long run it can be demonstrated only by the development of probable difference. In taking the position that there are common structural tendencies, we do not mean to imply that party structures do not vary. They do, both in the same society and in different societies. But despite such variations which are primarily the product of particular adaptations to special environmental conditions, parties exhibit structural similarities in certain basic respects. We view the party as a specialized system of action in democratic societies, with a special meaning and purpose in the political and social order. It is distinguishable by its primary goal (to occupy at least some of the governmental leadership posts) by its Competitive electoral relationships with similar groups, and by its special pattern of public support and adaptation strategies18.

Michigan, Rand McNally and Company, (1964) P.1
Supra note 14, P4.
The party is almost by definition an open, informal, personalized system. Robert Michels saw party as an "Organization ever greedy for new members".19

The party no longer seeks to fight its opponents, but simply to outbid them. He further claimed that party would sacrifice its political virginity, by entering into promiscuous relationships with the most heterogeneous political elements.20

In the first half of the nineteenth century, when people referred to parties, they were thinking primarily of ideological rather than the men who subscribed to them. With Marx and Lenin, the accent was placed on the underlying social foundations, parties were viewed as the expression of social classes in a nation's political life.

Ideologies, social foundations, structure, organisation, participation, strategy all these aspects must be taken into account in making a complete analysis of any political party.1

British Labour party in is original organisation of 1900 exemplifies this type of party at that time, it did not recruit a regular party membership. Its main committees were formed by

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19. ibid, P.5.
20. ibid; also see Grazia, Alfred de, Roberto Michels', 'First Lectures in Political Sociology' (Minneapolis: University of Minnesota Press, 1949), P.145 and Michels, Robert, Political parties (Glencoe, III: Free Press 1949) P.374-76.

Union representatives, mutual aid societies, cooperatives and intellectual groups (for example the Fabian Society) who agreed to take common action on political issues.

iv) **English and American Party System**

A political party is a group organized for the purpose of achieving and exercising power within a political system. It may seek political power either by election or by revolution. An interest group for special interest group) is any aggregate of individuals who, bound by one or more shared concerns or wants, makes claims upon other groups in society or upon society in general in order to maintain or promote its position or objectives.

An interest group that attempts to influence government becomes a "pressure group". It is distinguished from a political party in that whereas a party puts up candidates for election to public office and has a structure and carries out activities to secure their election, a pressure group seeks to influence both the government and the parties. The Catholic interest in Italy, for instance, is served both by the Christian Democratic Party and also by the Catholic Action Society. The first is unquestionably a party with its own programme, mode of operation, and structures, and the second is unquestionably a pressure group. Again the "natural" group of Swedes in Finland serves itself by the Swedish People's Party; this is clearly a special interest group yet it puts up candidates and is represented in the legislature because it thinks its members interest is best served by exerting pressure as part of a governmental coalition.
Thus, it may be that what begins as a pressure group winds up as a political party. The British Labour Party had its origins in 1900, when a collection of trade unionists formed a Labour Representation Committee in order to secure the election of working class MPs to Parliament; later it broadened its membership and program to become the Labour Party of today. Again, in France, Pierre Poujade's pressure group, the Union of Small Shopkeepers, was involved in the 1956 elections and won over 40 seats, thus becoming a political party before retiring from the electoral arena in 1958 and reverting to pressure group status. The reverse process can also occur, as a political party engenders, pressure groups; thus, the Communist parties in France and Italy have set up interest groups for women, youth, workers, and the like.

Political parties originated in their form in Europe and the United States in the 19th century, along with the electoral and parliamentary systems whose development is reflected in their own evolution. The term party has since come to be applied to all organized groups seeking political power, whether by democracies elections or by revolution.

In earlier, pre-revolutionary, aristocratic and monarchical regimes, the political process unfolded within restricted circles in which cliques and factions, grouped around particular noblemen or influential personalities, were opposed to one another. The establishment of parliamentary regimes and the appearance of

parties at first squarely changed this situation. To cliques formed around princes, dukes, counts, or marquesses there were added cliques formed around bankers, merchants, industrialists, and businessmen. Regimes supported by nobles were succeeded by regimes supported by other elites. These narrowly based parties were later transformed to a greater or lesser extent, for in the 19th century in Europe and America there emerged parties depending on mass support.

The 20th Century saw the spread of political parties throughout the entire world. In Africa large parties have sometimes been formed in which a modern organization has a more traditional ethnic or tribal basis; in such cases the party leadership is frequently made up of tribal chiefs. In certain areas of Asia, membership in modern political parties is often determined largely by religious factors or by affiliation with ritual brotherhoods. Many political parties in the developing countries are partly political, partly military. Certain Socialist and Communist parties in Europe earlier experienced the same tendencies.

These last-mentioned European parties have demonstrated an equal aptitude for functioning within multi-party democracies and as the sole political party in a dictatorships. Developing originally within the framework of liberal democracy in the 19th century, political parties have been used in the 20th century by dictatorships for entirely undemocratic purposes.

1. *ibid.*
The terms "political party" or "party" is frequently defined by statute, in which case the statutory definition is controlling with respect to ascertaining what organizations or associations constitute a political party.

The American Court have held that Communist Party was not to be a political party within the meaning of the New York Election Law which defines a "party" as any political organization which in the last preceding election for governor polled at least 25,000 votes for governor, or at an election for governor after January 1, 1936, polled at least 50,000 votes for governor.

Whether or not a political party has been formed depends on the circumstances of the case and the applicable statutes. The American Courts have held that a political party is formed where a Republican caucus votes to adjourn for organization of a citizens caucus and thereupon some Democrats unite with the Republicans present and nominate a citizens ticket which is voted at a town meeting, although no committees are appointed and no steps are taken to effect a permanent organization.

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*ibid also see Morrison Vs. Lamarre 75 RI 176, 65A 2d 217 referring to the Statute defining the term "party" or "political party" as any political organisation which at the preceding general election polled at least 5 per centum of entire votes cast in the State for Governor.*

*ibid Melzer V. Isaacs (Sup) 82 NYS2d, 18, Fields Vs. Osborne, 60 Conn, 544, 21 A 1070, also see Cooper V. Cartwright, 200 Okla 156, 195 P2d 290 (holding that a statutory provision authorizing a political party to submit list of candidates for nomination in an election when sufficient number of voters have petitioned the secretary of state does*
The terms "political party" and "political body" are not interchangeable. As a basic properties, a party is an organization which has polled a sufficiently large number of votes at the proceeding general or municipal election to entitled to to nominate all its candidates for office and to elect all its party officers at primary under the provisions of the election code. An organization which does not poll the requisite number of votes at the preceding election cannot nominate candidates or elect its officers at primaries. It can nominate candidates by nomination papers only.

In the absence of a controlling statutory definition, however, the term "political party" may be generally defined as an unincorporated association of persons which sponsors certain ideas of government or maintains certain political principles or beliefs in the public policies of the government, and which is formed for the purpose or urging the adoption and execution of such principles in governmental affairs through officers of like beliefs.
A political party is a voluntary association formed of the free will and unrestrained choice of those who compose it. No man is compelled by law to become a member of a political party, or, after having become such, to remain a member. He may join such a party for whatever reason seems good to him, and may quit the party for any cause, or without cause.

It has been said that political parties originated in the United States with the adoption of the Federal Constitution.

Political parties are institutions of very great importance under our form of government. They are, in fact, the effective instrumentalities by which the will of the people may be made vocal, and the enactment of laws in accordance therewith made possible. So potent have they become in determining the measures and in administering the affairs of government that they are now regarded as inseparable from, if not essential to a republican form of government.

The people have an inherent right to form, organize, and operate political parties and to reorganize an old political party.

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8. ibid also see Davis V.Hambrick 109 Ky 276, 58 SW 779; also see Bell V.hill 123 Tex 531, 74 SW 2d 113; whitter V.Whipple 26 Colo 1, 55 P.1081.
9. ibid also see Bell V.Hill, 123 Tex 531, 74 SW2d 113.
11. ibid also Cooper V.Cartwright 200 Okla 456,195 P2d 290.
This is included in the right of suffrage. It has been characterized as an inalienable right guaranteed by the constitution\textsuperscript{12}.

Electors holding certain political principles in common may freely assemble, organize themselves into a political party, and use all legitimate means to carry their principles of government into active operation through the ballots of their fellow citizens\textsuperscript{13}.

Political parties through conventions and primary elections regulated by state statute select candidates for the most important public offices and, in so doing, are acting as state agencies and not as voluntary associations\textsuperscript{14}.

The conception that a political party is merely a private association of citizens has been generally abandoned. In most Jurisdictions the State has seen fit to declare that political parties shall be, as to their mode of holding conventions and

\textsuperscript{12} ibid also Sarlls V.State 201 Ind 88, 166 NE 270,67 ALR 718.
\textsuperscript{13} ibid also see Britton V.Election Commrs. 129 Cal.337, 61 P.1115; also see Cooper V.Cartwright, 200 Okla 456,195 P2d 290; State ex rel. Megrael V.Phelps, 144 Wis 1,128 NW 1041(holding that right of suffrage includes the right of voters to separate into groups according to their political beliefs respecting governmental policies, and the right of every group to organize and have all machinery in that regard not reasonably prohibited by law for making the organization effective as regards declaring policy of its members, and vitalizing such policies by electing officers in harmony therewith to legislate and execute law to that end).
\textsuperscript{14} ibid also see State ex rel Buttz Vs.Marion Circuit Court, 225 Ind.7,72 NE2d 225, 170 ALR 187.
nominating candidates for public office, regarded as public bodies whose methods are to be controlled by the state\textsuperscript{15}.

The term "political party" or "party" is frequently defined by statute in which case the statutory definition is controlling with respect to ascertaining, what organisations or associations constitute a political party\textsuperscript{16}. In the absence of a controlling statutory definition, however, the term "political party" may be generally defined as an unincorporated association of persons which sponsors certain ideas of government or maintains certain political principles or beliefs in the public policies of the Government and which is formed for the purpose of urging the adoption and execution of such principles in governmental affairs through officers of like beliefs\textsuperscript{17}.

\textsuperscript{15} ibid also see Katz V.Fitgerald, 152 Cal 433, 93 P.112 (Political parties take their character as state agencies from the duties imposed on them by State statutes.

\textsuperscript{16} Political Parties', in Elections (25) American Jurisprudence 2 (d) (volume 25) P.801, See also, Smith V.Allwright 321 U.S.649 L. ed. 987, also see Morrison V.lamarre 75 RI 176, 65A2d217 referring to the statute defining 'party or political party' as any political organization which at the preceding general election polled at least 5 per centum of entire votes casts in the state for Governor.

\textsuperscript{17} Robinson V. Holman, 181 ARK 428, 26 SW2d 66,70; also see cooper V.Cartwright 200 Okla 456, 195 P2d 290 holding that a statutory provision authorizing a political party to submit a list of candidates for nomination in an election when sufficient number of votes have petitioned. The Secretary of state does not provide procedure for creation or organization of a new political party and filing of petition signed by number of voters specified does not constitute creation or organization of a new political party.
government into active operation through the ballots of their fellow citizens.

The right of suffrage includes the right of voters to separate into groups, according to their political beliefs respecting governmental policies, and the right of every group to organize and have all machinery in that regard not reasonably prohibited by law for making the organization effective as regards declaring policy of its members and vitalizing such policies by electing officers in harmony therewith to legislate and execute law to that end. Although earlier decisions held that political parties were completely regulated by their party bye laws and constitutions and were not to be regarded as constituting a governmental agency or instrumentality throughout the years there has been a marked change in the attitude of the courts toward political parties and their primaries, and later decisions indicate that political parties have come to be regarded by the Courts as governmental agencies through which the sovereign power is exercised by the people.

The conception that a political party is merely a private association of citizens have been generally abandoned. In most jurisdictions the state has been fit to declare that political parties shall be, as to their mode of holding conventions and nominating

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2. ibid. also see State ex rel. Mc.Grael v. Phelps 144 Wis 1, 128 NW 1041.
3. ibid.
candidates for public office, regarded as public bodies whose methods are to be controlled by the State.

Political parties through conventions and primary elections regulated by State statute select Candidates for the most important public offices and, in so doing are acting as state agencies and not as voluntary associations.

vi) Indian Party System

In our contemporary society, it is inconceivable to separate democracy from political parties. Such has been the modern growth of democracy that all those countries which claim or proclaim to be democratic, have more than one political party. One political party is considered to be the anti-thesis of democracy. In democracies, the political parties are sometimes well established, well recognised and founded on ideology and principles, sometimes growing just like the much rooms around a leader or group of leaders without any ideology or principle, driven by the sheer motivation of capturing or sharing political power. The latter type of political parties are much true of the developing countries.

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4. ibid, p.802 also see Katz V. Fitzgerald 152 cal. 433, 93 p.112; Political parties take their character as State agencies from the duties imposed on them by the state statutes; Smith V. Allwright 321 U.S. 649, 88 L.ed. 987, 64 S.Ct.

5. ibid also see State ex Rel. Buttz V. Marion Circuit court 225 Ind.7, 72 NE2d, 225.

6. Diwas, Paras, Aya Ram Gaya Ram; the Politics of defection (1979) 21 JILI 291.292; also see Sharma, Mool Chand, 'Politics of Defections and Democracy' (1979) 13 JCPS 328, Jupp, James, 'Australian Party politics' (1964) Report, of the Committee on Defections, (1969); Kashyap, Subash C., Defection Law and
Party system is an integral part of the Parliamentary form of Government. Barring a few members who may not be attached to any party, most members of Parliament have a dual capacity they represent a constituency and a party. There is always a party in power and party of parties in Opposition.

Democracy on proper lines, remarked Speaker Mavalankar, will never grow unless there are the fewest number of parties, possibly not more than two major parties, which can almost balance each other as the Government and the Opposition. With a view to discourage multiplication of parties and growth of Splinter groups, he laid down general principles on which recognition can be given to political parties for their parliamentary work in Lok Sabha. These principles were later embodied in a direction from the Speaker.

VII CONDITIONS OF PARTY RECOGNITION

Before the Anti Defection Law, came into being the following was the criteria for An association of members which proposes to form a


Parliamentary Party in Lok Sabha must satisfy the following requisite conditions:

There should have been a distinct ideology and programme of work whether in the political, economic or social field, which was announced by them at the time of general elections and on which the members of Lok Sabha have returned to the House. They should form a homogeneous unit capable of developing into a well-knit entity.

There should be an organization both inside and outside the House, which is in touch with public opinion on all important issues before the country.

There should be a strength which would enable them to keep the House, i.e. their number in the House should not be less than the quorum fixed to constitute a sitting of the House, which is one tenth of the total membership.

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9. In the First Lok Sabha the Communist Party was recognized as a Parliamentary Group in the House. In August 1954, however, the Group lost recognition when its membership dropped to 29. In the Second Lok Sabha no group of members was recognised as a parliamentary Group in the House. The Communist Party consisting of 34 members, was recognized in the Third Lok Sabha as a Parliamentary group in the House. The Group, however, lost its recognition in September 1964 due to split in the Communist Party of India as a result of which the Group in the House was split into two. In the Fourth Lok Sabha, as constituted after the general elections in 1967, the
A political party, having representation in Lok Sabha, which satisfies the first two conditions but fails to command the required minimum strength viz. one tenth of the total membership of the House is recognized as a Parliamentary Group, provided its membership is at least 30. However, in certain cases, even where the membership of an association of members is less than 30, it may be given, under the orders of the Speaker, the nomenclature of a Group for the sake of convenience, without according formal recognition as such.

Swatantra Party (45 members) and the Jan Sangh (31 members) were recognized as Parliamentary Groups. After the Congress split in November 1969, certain members dissociating themselves with the ruling Congress Party formed a separate party called the Congress Party (Opposition). Since it had a strength of 60 members in the House and satisfied all the conditions prescribed for recognition as a Parliamentary Party, it was for the first time recognized as an Opposition Party and its leader, Dr. Ram Subhag Singh, recognized as the Leader of the Opposition. The recognition lasted till the dissolution of Lok Sabha in December 1970. In the general elections held in 1971, the ruling Congress Party received 348 seats in a House of 515 and none of the opposition parties secured the minimum strength needed for recognition. In the Fifth Lok Sabha, therefore, no group of members was recognized as a Parliamentary Group in the House.

In the First Lok Sabha, associations of members with such a nomenclature were: National Democratic Group, P.S.P. Group, Union of Socialists and Progressives, Ganatantra Parishad, Socialists Group and Lok Sevak Sangh. In the Second Lok Sabha, members of Communist Party, Praja Socialist Party, Socialist Party Scheduled Caste Federation (later the name was changed to Republican Group), Swatantra Party, Ganatantra Parishad, Bhartiya Jan Sangh, Hindu Mahasabha and D.M.K. were given the nomenclature of a Group.

During the Third Lok Sabha, in addition to those mentioned above, Muslim League and Nirdaliya Dal were also given this nomenclature. During the Fourth Lok Sabha, members of Dravida Munnetra Kazhagham, Communist Party of India, Sanyukta Socialist Party, Communist Party of India (Marxist) Praja Socialist Party, Progressive Group, Independent Parliamentary Group and Nirdaliya Sangathan were given the nomenclature of a Group.

Members of communist Party of India (Marxist), Communist Party of India, Dravida Munnetra Kazhagham, Jana Sangh and Congress Party (Opposition) were given the nomenclature of a Group in the fifth Lok Sabha.

Party affiliation of members belonging to a group having a strength of less than 15 (i.e. less than half of the number required for recognition as a group\footnote{The Page Committee observed:}) and upto
was shown as "OP ML (i.e. other Parties-Muslim League)" etc. In cases where there was only one member belonging to a party, he was treated as unattached member. The party affiliation of such members and of Independents was shown as "Unattached". The party affiliation of members belonging to groups having a strength of 15 and above was shown by the name of the group to which they belonged.

Members of communist Party of India (Marxist) and All India Anna Dravida Munnetra Kazhagham were given the nomenclature of a Group in the Sixth Lok Sabha.

Members of Janata (S) Communist Party of India (Marxist), Janata and Dravida Munnetra Kazhagham were given the nomenclature of a Group in the Seventh Lok Sabha.

Members of Telugu Desam and CPI(M) were given the nomenclature of a Group in the Eighth Lok Sabha.

"The Constituent group forming a party having a common programme of Parliamentary work, a common organization, a common leader and a whip to speak on their behalf on the floor of the House, may be accorded recognition as a Parliamentary Party or Group for purposes of functioning in the House. The condition is applicable equally to both the Government and opposition parties and no distinction can be made between a Government party consisting of various constituent groups and an opposition party similarly formed".
In the list of members of Fifth, Sixth and Seventh Lok Sabha, party affiliation of members belonging to a group having a strength of less than 15 (i.e. less than half of the members, required for recognition as a Group) and up to 2 was shown as "Other party".

In case where there was only one member belonging to a party, he was treated as an unattached member. The party affiliation of such members and to independents was shown as "Unattached". The party affiliation of members belonging to group having strength of 15 and above was shown by the name of the group to which they belonged.

VIII. Post Constitution (52nd Amendment) Act, 1985-Position

During the Eighth Lok Sabha, the practice of showing 'independents' and 'lone members of legislature parties' as 'unattached' was done away with consequent on coming into force of Constitution (Fifty-second Amendment) Act, 1985: which provides that

"an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member".

Accordingly, only those members who contested and won the election as independent candidates were shown as independents in the list of Members with effect from August 7, 1987. Nominated members were

12 Explanation (a) of Paragraph 2(1) of the Tenth Schedule of the Constitution of India.
shown as such (instead of being dubbed with unattached members). Likewise, members elected on party tickets were shown as belonging to the respective parties to which they belonged. Only those members who were elected to the House on a party ticket but were subsequently expelled from the party were treated as shown as "Unattached" in the List of Members.

As regards recognition of a Parliamentary Party or a Group formed as a result of a combination of different parties or groups with different ideologies and programmes, as happened recently at the Centre and in several states where different parties or groups joined together to form United Front Government.

Members of different parties having different ideologies and unattached members who form an adhoc group with distinctive designation may also be termed as such for the purpose of function in the House\(^\text{13}\).

**IX Party and Anti Defection Law:**

\(^{13}\) The constituent groups forming a party, having a common programme of parliamentary work, a common organization, a common leader and a Whip to speak on their behalf on the floor of the House, may be accorded recognition as a Parliamentary Party or Group for purposes of functioning in the House. This condition is applicable equally to both the Government and the Opposition parties and no distinction can be made between a Government Party consisting of various constituent groups and an Opposition Party similarly formed.
With the coming into force of the Constitution (Fifty Second Amendment Act, 1985, a member of a House belonging to any political party becomes disqualified for being a member of the House if he voluntarily gives up his membership of such political party. A nominated member of a House, if he is a member of any political party on the date of his nomination or becomes a member of any political party before the expiry of six months from the date on which he takes his seat, also becomes disqualified for being a member of the House if he voluntarily gives up his membership of such political party.

A nominated member of a House, if he does not join any political party before the expiry of six months from the date on which he takes his seat becomes disqualified for being a member if he joins any political party after the expiry of six months. An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party becomes disqualified for being a member, if he joins any political party after such election. For this purpose leader of each legislature party is required to furnish, within the prescribed period, a statement containing the names of members of such legislature party, the names and designations of the members of such party who have been authorised by it for communicating with the Speaker and the rules and regulations of the political party as well as the legislature party. Every

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15 Paragraph 2 (1)(a) of the Tenth Schedule of the Constitution.
16 Explanation (b) paragraph 2 (1) of the Tenth Schedule of the Constitution
17 Paragraph 2(3) of the Tenth Schedule of the Constitution of India.
18 Paragraph 2(2) of the Tenth Schedule of the Constitution of India.
19 Rule 3 of the Members of Lok Sabha (Disqualification on ground of
member before making and subscribing on oath or affirmation is required to deposit with the Secretary General his election certificate, or as the case may be, a certified copy of the notification, nominating him as a member and also to furnish a statement of particulars and declaration as provided for in the rules. Whenever any change takes place in the information furnished by the leader of a legislature party, he is required to furnish within the prescribed period, information in writing regarding such change.

X) **Facilities to Parties**

What are the facilities which a party got after it being recognised by the Presiding Officer of the House.

A recognised Parliamentary Party is generally granted the following facilities.

- Allotment of blocks of seats in the House in proportion to the strength of the party and the total number of seats available in the Chamber.
- Allotment of a furnished room with telephone facility in the Parliament House for the purpose of Parliamentary work of the party.

Upto the Fifth Lok Sabha, the Congress Party, which was the party in power, was allotted two furnished rooms in the Parliament House. Opposition 'Groups' were provided with a furnished room and a few lounges in the lobby of the Central Hall. Four furnished rooms in the Parliament House

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Defection Rules 1985. (hereinafter may be referred to as "1985 Rules")
Rule 4 of the 1985 Rules.

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were provided each to the Janata Party which was the party in power, and the Congress Party which was in Opposition. A furnished room was also allotted to All India ADMK Group in the Sixth Lok Sabha. The Seventh Lok Sabha, the Congress Party, which was the party in power, was provided four rooms, two on the ground floor, and two on the third floor. All other political parties with a strength of at least eight members in both the Houses were allotted a furnished room each. The same facility continues in the Eighth Lok Sabha. Stenographic assistance is rendered to members by the Secretariat and a telephone is also provided for them.

Allotment of Committee rooms or other available accommodation for holding party meetings. On written requests from parties or groups, the Central Hall and Committee rooms are made available to them for holding party meetings connected with parliamentary work. Each request is examined on its merits. The following kinds of requests have been complied with:

For holding a meeting of a party or group in Parliament.
For holding meetings of members from certain States to discuss cooperation of parliamentarians in resolving certain national problems. For holding meetings of members and Ministers from a particular state to consider problems relating to that State. For holding a meeting of members drawn from all parties.
No standing allotment of a Committee Room is, however, made to any party or group.

Supply of Parliamentary or Government papers or publications.
Parliamentary papers or publications are supplied to a party or group on specific request made by them to the Speaker in that behalf.

Nomination to a Parliamentary Committee in proportion to the strength of the party.

Submission to the Speaker of a panel of names for selection of members to be called to speak in debates.
Consultation in the matter of arrangement of business of the House or any other important matter coming before the House.
Allotment of a seat in the front row in the Central Hall on the occasion of the President’s address and other important functions.

In addition, certain other facilities are provided, e.g. library facilities to the parties and groups. Residential accommodation is sometimes provided for leaders of groups from the general pool on the recommendation of the Leader of the House.

1. Supra Note 7 P.318; Also see Kashyap, Subash C. ‘Reforming the Constitution (1992)’.
2. Ibid, P.319
Thus, we have seen that the party system which is working in the Indian democracy as well as other countries. What are the pros and cons of this system.

**PARTY WHIP**

In a legislative body, not only the fate of a particular measure under consideration, but the very life of the Council of Ministers itself, may depend upon a single division. When the Division bell rings, about three minutes are given to the members to rush into the Chamber from the Lobbies, Library etc. yet the Government or any party cannot take it for granted that its followers would always be present in sufficient number in the precincts of the House at the time of a division. The duty of keeping the members of a party on hand accordingly devolves upon the Whips'.

1. **British and American Position**

Now, we will examine the nature, position and functions of the Whip and their duties in the American and British Parliamentary System.

The member of Parliament is thus returned to support a party. He recognises his party obligations by receipt of the Whip, if he disagrees.

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The metaphor is borrowed from the hunting field, and its parliamentary application can be traced to Burke who in a debate in the House of Commons described how the King's ministers had made great efforts to bring their followers together, how they had sent for their friends to the north and to Paris, whipping them in. The Phrase adopted by Burke caught the public fancy and soon became popular Ilbert, Parliament, Its History, Constitution and Practice, London 1948, P.135.
with the party policy on a particular matter, he may abstain from voting. Occasionally, perhaps, he votes against his party. If he does so, too frequently, he loses the 'whip' and this means, probably the loss of party support at the next election. Without that support, he will probably not be elected. Also, his party loyalty as well as his self interest will induce him normally to vote with the party.

Sir Austin Chamberlain⁴ once referred to the 'almost incredible strength' of party loyalties; and John Bright is reported to have said that not thirty men outside the Irish would have voted for Home Rule in 1885 if any one but Mr.Gladstone had proposed it. Above all a supporter of the Government is very unlikely to take any step which will defeat the Government. For, if it is defeated on a major issue, it will resign or dissolve parliament. If he resigns, he has assisted the formation of a Government by the opposition, which is ex-hypothesi worse than, that which he was elected to support. If Parliament is dissolved, he will have to undergo the trouble and possibly the expense of an election and it may not be certain that he will be re-elected⁵.

A Government which has a majority thus has the means for maintaining its majority. The energy of the Whips, organisation is primarily directed to that end⁶. Forest has rightly said that the business of both Houses is arranged between the party whips:

"The business of both Houses is arranged between the party whips. The Government must give the opposition a chance to be heard on any majority issue"⁷.

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⁴ Life and Letters of Sir Austin Chamberlain, Vol.I, P.271
⁶ ibid, P.474
⁷ Forrest, G.A., Constitutional Law, Eighth Edition, 1950, P.21, Also see Jennings, Sir
II) **Government and opposition whips**

Every party requires whips to control the presence of members at debates, to arrange pairs so as to allow leave of absence of members, and to keep the party leaders in touch with the rank and file, often also with the local party associations, especially they have opportunities to influence the local choice of candidates. The chief whip has normally control of the Central party funds, and the vast majority of candidates cannot stand without assistance from that source. In the case of the Government, the Parliamentary Secretary to the Treasury is Chief Whip junior lords aid him⁸. Their duty is of fundamental importance the Chief Whip has to advise the Government when business can best be taken up or postponed and as the wisest way to allocate parliamentary time as between the various measures the Government has on hand⁹.

III) **Australian Position:**

Each political party has a whip in the upper House and in the Lower House. He arranges the order in which his party's members will speak in debate. He disciplines their voting. He makes sure that all the

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1. ibid P.44 also see. that the Salary for all are provided by the Ministers of the Crown Act, 1937 (1 Edw. 8 & 1 Geo 6, C.38) SS.1.(3); 10 where laid down that. They are aided by the Reasuer of the House-hold, the Comptroller and Vice Chamberlain, all of whom receive 1,000 a year, and by unpaid assistant Whips, at present three in number. ibid.
members available are in the particular House when an important vote is about to be taken. He also arranges a "pair". 

In the U.K. the Government Chief Whip and the Opposition Chief Whip Constitute what are known as the 'usual channels' whereby negotiations are carried on regarding conduct of public business. 

The Government 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 since the average elector votes for the party label, this means, probably, that the member will not be reelected. Membership of the House and accession to office alike depend on party service and party support. 

The House of Commons Consists of parties. The Government as a party authority, has control over one or more of them. It appoints 'whips' and pays many of them out of public funds. It is their function to see that members of the party attend the House and support the Government. If the Govt. has a majority and so long as that majority holds together, the House does not control the Govt. but the Government controls the House.

Morrison, 'Government and Parliament', P.102 
Supra note 5. p.18; Also see Lane, P.H. The Australian Constitution 2nd end, 1970. 

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The Parliamentary secretary to the Treasury and the Lords of the Treasury have some departmental duties in the Treasury. They have to sign Treasury warrants, but their main function is to control the proceedings of the House of commons, and keep the majority together, as Government whips under the direction of the Prime Minister or the leader of the House. They are about thirty other parliamentary secretaries or other persons ranking as assistant ministers. In addition, there are five appointments in the Royal Household which are regarded as political offices. The holders of these offices, too are whips if they are in the House of commons, and assist in Government business in the House of Lords if they are peers.

IV) BRITISH POSITION

The officers or whip of the party in office consist of the Chief Whip who holds the officials positions of Parliamentary or patronage Secretary, to the Treasury three officers of the Household, and five Lords of the Treasury, with the addition of up to six Members who act as Assistant whips all these Whips received salaries\(^{14}\). All Government Whips rank as Ministers of the Crown. One of the Lords of the Treasury is usually appointed Deputy Chief Whip.

The Whips of a party in opposition consist usually of the survivors of those who were Whips when it was in office together with as many other members as may be selected for the purpose. Since 1965 the Chief Opposition Whip, and since 1972 not more than two Assistant Opposition Whips, have been paid a salary out of the Consolidated Fund\(^{15}\). The

\(^{14}\) S.1 (1) (a) and Schedule 1. Ministerial and other Salaries Act 1975,

\(^{15}\) S.1(1)(b) and Schedule 2. Ministerial and other Salaries Act, 1975.
Government Whips and the Whips of the official opposition and of the second opposition party (when there is more than one party in opposition) have offices as near the Chamber as may be.

In 1975 the House resolved that Opposition parties should be given financial assistance from public funds in respect of their parliamentary duties.\(^{16}\)

V) **Duties of Whips**

The efficient and smooth running of the parliamentary machine depends largely upon the Whips. Certain duties are common to Whips of all parties, but by far the most important duties devolve upon the Government Chief Whip. He is concerned with mapping out the time of the session; for applying in detail the Government's programme of business; for estimating the time likely to be required for each item, and for arranging the business of the individual sitting. In drawing up the programme he is limited to a certain extent by the standing orders, which allot a modicum of time to private Members; and by statute law or standing orders, which require, or may require, certain business to be completed by specified dates as well as by certain conventions which make it obligatory upon him to consult the Whips of opposition parties and even to put down items of their selection. In carrying out his duties, he

\(^{16}\) These payments are made at a scale of 1080 pounds for every seat won by each party at the preceding General Election, Plus pounds 2.16 for every 200 votes then cast for it, up to a maximum of Pounds 325,000 for any one party. To qualify for such assistance a party is required either to have gained two or more seats at the General Election, or if only one seat has been won, to have received at least 150,000 votes (Votes and proceedings, March 8, 1983, P.362. For the terms of the original Resolution see.CJ (1974-75) 310.
is directly responsible to the Prime Minister and Leader of the House. It is also part of his duties to advise the Government on parliamentary business and procedure, and to maintain a close liaison with Ministers in regard to parliamentary business which affects their departments. He and the Chief Whip of the largest opposition party constitute the 'usual channels', through which consultations are held with other parties and Members about business arrangements and other matters of concern to the House.

The duties which are common to Whips of all parties are the following. They keep their Members supplied with information about the business of the House, secure the attendance of Members, arrange for their Members who are unable to attend divisions to 'pair' with Members of the opposite side of the House so that their votes may be neutralised and not lost and supply lists of members to serve on standing and select committees. They also act as intermediaries between the leaders and the rank and file of their parties in order to keep each informed of the views of the other.

After detailed examination of the concept of Whip and the duties and functions of the Whip in Parliamentary democracy and the duties of the Government as well as opposition whips, now we shall examine the Indian Position of the Whip.

VI. INDIAN POSITION

In the parliamentary form of Government, a party has its own internal organisation inside Parliament and is served by a number of officials known as Whips, chosen from members of the party itself. In fact, the efficient and smooth working of parliamentary democracy depends to

\[133\] Supra note 14.
a very large extent on the Whips of the party in power and the party or parties in opposition. In Indian parliamentary democracy, parliamentary Affairs Minister is the Chief Whip of the Ruling party at the Centre as well as the States, as the Case may be.

Whips are responsible for the attendance of the members at the time of important divisions. During sessions, Whips of different parties send to their supporters periodic notices, also sometimes called "whips" warning them when important divisions are expected telling them the hour when a vote will probably take place, and requesting them to be in attendance at that time. The importance of the division is indicated by underscoring the notice by a number of lines, or a couple of very thick lines.

Being constantly in touch with the members in the lobbies, etc. of the House, the Whips acting as intermediaries between the leaders and the rank and file of their parties, keep the former in touch with the currents of opinion to only within their own party and thereby nip the incipient revolt in the bud but also to some extent with other movements of opinion inside the House. And it is through the Whips that members of a party come to know about their leader's views and the plans into which the leader think it necessary or expedient to initiate them. The Whips are the active agents within the parties- a channel of communication whereby on party negotiates with another concerning topics for debates or conduct of business in the House. On the question of issuing of frequent whips eminent Jurist Shri M.C.Chagla observed:

"On every subject, a whip is issued, thereby testing the loyalty of the member and compelling him to vote with the party, whether he believes in the particular matter which is before the House or not. I think whip should be issued very rarely, and a
party should not look upon a defeat in the House necessarily as a vote of no confidence. Now take the United States—you have the Senate you have the House of Representatives—where the parties are perhaps not so strong as they are here or in the U.K. but nobody minds if the President is a Republican and the Democrats carry a particular measure or pass a particular Resolution. Therefore, parties should not look upon every topic that comes before Parliament as something that involves a vote of confidence.\(^\text{18}\)

He further said that:

"It is only in matters of policy, in matters of grave importance, in matters of national emergency that a whip should be issued, the matter being looked upon as a vote of no confidence. And even there you should permit your members if they say it is a matter of conscience to vote against you or at least abstain. You know it is the usual practice. Take the Labour Party; a member says I do not agree with the policy Serious attention might be taken if he votes against the party but he is permitted to abstain if he says it is a matter of conscience. Therefore, we should not be in a hurry to take disciplinary action against members of the party because as a matter of conscience, they do not see eye to eye with the party and they abstain or do not vote for the party.\(^\text{19}\)"

I am in respectful agreement with the eminent jurist, as the Tenth Schedule disqualify the member for the defiance of his party's whip. When such a serious consequence is the result frequent Whip is not a good thing because dissent is the basic principle of parliamentary democracy.

\(^{19}\) ibid, P. 3775
The chief Whip of the Ruling Party in Lok Sabha is the Minister of Parliamentary Affairs\(^2\). The Chief Whip is directly responsible to the Leader of the House. It is a part of his duties to advise the Government on parliamentary business and to maintain a close liaison with the Ministers in regard to Parliamentary business affecting their Departments.

The Chief Whip is the eyes and ears of the Leader of the Party so far as the members are concerned. It is the duty of the Government to maintain quorum in the Parliament.

The Chief Whip is assisted by one Minister of State and two Deputy Ministers\(^1\). With their assistance, he controls the members of the

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\(^{2}\) The Chief Whip was given the Ministerial status in 1949. Till 1962, his rank was that of a Minister of State when he was made a Minister of Cabinet rank. Consequent on the appointment of the Minister of Parliamentary Affairs as the leader of the House in Lok Sabha in February 1966, the new Government Chief Whip was given the status of the Minister of State. But it was again raised to the status of Cabinet rank in March, 1967, when the Prime Minister became the leader of the House; In the Tenth Lok Sabha, When Shri P.V. Narsimha Rao the then Prime Minister was not member of the either of Parliament, Shri Arjun Singh, Union Minister was Leader of the Lower House and an independent Minister was handling only the Parliamentary Affairs Ministry. In the Eleventh Lok Sabha, the Prime Minister Shri H.D. Deve Gowda is not leader of the Lok Sabha, Shri Ram Vilas Paswan, Railway Minister is the leader of the House and Tourism Minister Shri Srikant Jena is Chief Whief as he is having additional charge of Parliamentary Affairs.

\(^{1}\) Prior to 30.6.1970 the Government Chief Whip had two Deputy Chief Whips to assist him, besides a number of Regional Whips. A Government Deputy Chief Whip was being paid a salary of Rs.1,650 per month, in lieu of the salary and allowances to which he was entitled as a member of Parliament. U.S.Q.No.951 (1970)LSD July 31, 1970.
party in power and ensures that during sittings, there is quorum in the House and that adequate number of members of the party are present at the time of voting. For this purpose, he sends them advance intimation through the familiar system of ordinary, one, two and three lines whips to indicate the extent of urgency attaching to the vote on a particular measure before the House.

During the course of actual working, Whips of the Government party and of parties in the Opposition come into contact with each other to sort out matters of common interest and to understand and accommodate each other on many crucial occasions when it is convenient for both sides to arrive at mutual understanding. Even in the matters of selection of members of the Opposition for select committees, contact between Whips of the Government and the Opposition becomes important.

Whips, both of the ruling party as well as those of the Opposition, play a very significant role in the smooth and efficient functioning of parliamentary democracy. Apart from their normal duties of making and keeping the House, they are required to establish and maintain, through a factual handling of situations, good and amicable relations between the Government and the Opposition benches a pre requisite for the smooth running of parliamentary business.

The question the chief Whip of a party is competent to issue a written whip to the members of his party on the floor of the House came up for discussion in Lok Sabha as a question of Privilege on 14 December 1987.

Although leave to raise the matter as question of privilege was granted, no specific decision was taken by Lok Sabha as no further motion
to consider the matter in the House or to refer it to the Committee of Privileges was moved.

VIII Whips and Tenth Schedule

The Constitution (52nd Amendment) Act, 1985, for the first time enacted provisions for the disqualification of the members of the either House of Parliament or the Legislative Assembly of a State, or, as the case may be, either House of the State Legislature for the defiance of a party direction.

Paragraph 2 (1)(b) 3 of the Tenth Schedule of the Constitution of India is necessary for better understanding the effect of the Whip in the nature of direction and the consequence of violation of the Whip issued by the Legislature Party. The member is disqualified from his/her membership unless protected by the provision of Para 3, and 4 and 5 of the Tenth Schedule. Only in the cases where the defection is by a group of Legislators in the manner of split or merger as protected by paragraph 3 and 4 of the Tenth Schedule. The Whip can be violated otherwise it is impermissible for a member to violate the party Whip.

3 Para 2(i)(b) of the Tenth Schedule.