

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS



**COMMITTEE
ON
DEFECTIONS**

PART II

**PROCEEDINGS OF THE COMMITTEE
AND
PAPERS CIRCULATED TO THE MEMBERS**

**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**



COMMITTEE ON DEFECTIONS

**REPORT OF THE COMMITTEE, REPORT OF THE
LAWYERS-GROUP AND EXPLANATORY
DISSENTING NOTES BY MEMBERS**

**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**

**REPORT
OF
THE COMMITTEE ON DEFECTIONS**

CONTENTS

1. Introduction	1
2. Resolution in Parliament	1—2
3. Constitution of the Committee	2—3
4. Meetings of the Committee	3
5. Reference of the legal and constitutional issues to the Lawyers Group	3—4
6. Meeting of the Lawyer Members	4
7. Considerations placed before itself by the Committee in drawing up this report.	4—5
8. Recommendations	5—11
I. Ethical	
A code of conduct for political parties	5—6
II. Political	
Inculcation of a clear understanding of the nature and character of representation and the duties of an elected representative	6
III. Constitutional	
(1) Barring appointment as Prime Minister/Chief Minister of a person who was not a member of the Lower House	6—7
(2) Barring the appointment as Minister of a defecting legislator for a prescribed period or until he goes back to the electorate and gets re-elected.	7—8
(3) Limiting the size of the Council of Ministers	7—8
(4) Right of dissolution being accorded to the Council of Ministers	8—9
(5) Provision for recall	9
IV. Legislative	
(1) Disqualifying a defector from continuing to be a Member of Parliament/State Legislature, and, additionally, on proof of acceptance of gratification, office of profit, etc., disqualifying him from being chosen as a member for six years.	9—10
(2) Registration of political parties	10—11
Notes and Minutes of dissent received from Members	
(1) Shri K. Anbazhagan	15—16
(2) Prof. Bal Raj Madhok	16—17
(3) Shri Bhupesh Gupta	17—26
(i) Definition	21
(ii) Recall	22
(iii) Right of dissolution of the Assembly	24
(iv) Size of the Council of Ministers	26

(i)

	PAGES
(4) Shri S. N. Dwivedy	26—28
(5) Shri H. N. Kunzru	28—29
(6) Shri Madhu Laimaye	29—32
(7) Shri P. Ramamurti	32—35
(8) Shri P. Venkatasubbaiah	35—37
APPENDIX I Composition of the Committee on Defections	38
APPENDIX II Composition of the Committee on Defections and the attendance by Members of its meetings	39—40
APPENDIX III Papers and notes circulated to the Members	41
APPENDIX IV Report of the Lawyer-Members of the Committee on Defections on the various measures discussed in the Committee to curb defections.	42—54
I. Introduction	42
II. Need of political morality and observance of a code of ethics by political parties	42—43
III. Possible legal and constitutional remedies	43—48
(i) Rendering a defector liable to incurring a disqualification	43—45
(ii) Limiting the size of the Council of Ministers	45—46
(iii) Right of dissolution being accorded to the Council of Ministers	47—48
(iv) Registration of political parties	48
(v) Recall	48
ANNEXURE I Copy of D.O. letter NO. 1351-HM (G)/68 dated 18/20th May, 1968 from the Union Home Minister to the members of the Group	49
ANNEXURE II Copy of D.O. letter No. 1351-HM(G)/68, dated 18/20th May, 1968 from the Union Home Minister to the Minister of Law	50
ANNEXURE III(A) Amendments to the Representation of the People Act, 1951 or by a special legislation	51
ANNEXURE III (B) Amendment to the Representation of the People Act, 1951 or by a special legislation	52
ANNEXURE IV(A) Amendment to the Constitution	53
ANNEXURE IV(B) Amendment to the Constitution	54

(iii)

NAME INDEX

PAGES

1. Anbazhagan, K.	2, 8, 15, 38, 39
2. Chatterjee, N. C.	2, 3, 4, 8, 38, 39, 42
3. Chavan, Y. B.	2, 3, 4, 5, 8, 38, 39, 42
4. Daphtary, C. K.	2, 3, 4, 38, 40, 42
5. Dwivedi, S. N.	2, 26, 38, 39, 41
6. Gupta, Bhupesh	2, 8, 17, 38, 39
7. Jaya Prakash Narayan	2, 8, 38, 39
8. Kumaramangalam, Moha.	2, 3, 4, 38, 40, 42
9. Kunzru, H. N.	2, 28, 38, 40
10. Limaye, Madhu	2, 7, 8, 29, 38, 39
11. Madhok, Balraj	2, 8, 16, 38, 39, 41
12. Menon, P. Govinda	2, 3, 4, 8, 38, 39, 42
13. Ramamurti, P.	2, 8, 32, 38, 39
14. Ranga, N. G.	2, 8, 38, 39
15. Seervai, H. M.	2, 8, 38, 39
16. Setalvad, M. C.	2, 3, 4, 8, 38, 40, 42
17. Shastri, Raghuvir Singh	2, 8, 38, 39
18. Singh, Karni	2, 38, 39, 41
19. Singh, Ram Subhag	2, 8, 38, 39
20. Venkatasubbiah, P.	1, 2, 8, 35, 38, 39

SUBJECT INDEX

	Paras	Pages
1. Conduct of Election Rules, 1961		
report	31	10
Appendix IV	7	44
2. Constitution of India		
—amendment of, to the effect that PM/CM-designate should be a member of Lower House		
Report	16-18	6-7
Notes & Minutes of Dissent		15, 16, 21, 28, 29, 33, 36, 37
—amendment to articles 75 and 164 for limiting the size of Council of Ministers		
Report	21-26	7-8
Appendix IV	11, 14	45, 46, 53, 54
Annexure IV (A) & (B)		
Notes & Minutes of Dissent		21, 29, 28, 29-31, 36
—Inclusion of a provision for recall		
report	30	9
Appendix IV	22	48
Notes & Minutes of Dissent		21, 22-24, 28
—interpretation of provisions of, in regard to dissolution of the Legislature		
Report	28	8, 9
Appendix IV	15-20	47, 48
Notes & Minutes of Dissent		21, 24, 25, 32, 34, 35
—Article 19(1) (c) of		
Report	32	10
Appendix IV	10	45
—Article 74 of		
Appendix IV	15	47
—Article 85 of		
Appendix IV	15, 20	47, 48
—Article 102 of		
Report	32	10
Appendix IV	4	43, 44
—Article 103 of		
Appendix IV	5	4
—Article 163 of		
Appendix IV	15	47
—Article 174 of		
Appendix IV	15, 20	47, 48

	Paras	Pages
—Article 191 of the Constitution of India		
Report	32	10-11
Appendix IV	4	43, 44
3. Council of Ministers		
—right of dissolution being accorded to		
Report	28-29	8, 9
Appendix IV	15-20	47, 48
Notes and Minutes of Dissent		21, 24, 25, 32, 34, 35
—size of		
Report	21-27	7-8
Appendix IV	11-14	45-46
Notes and Minutes of Dissent		21, 26, 28, 29—31, 36
—size of, in U.K.		
Appendix IV		46
4. Defections —		
—definition of		
Appendix IV	7-8	44, 45
Notes and Minutes of Dissent		21, 22, 24
—factors behind		
Report		25
Notes and Minutes of Dissent		20
—legislation to ban		
Report	31	9, 10
Appendix IV	4-10	43-45
Annexure III(A) & (B)		51, 52
Notes & Minutes of Dissent		27, 33, 34
—number of, before & after the IV General Election		
Report		18-20
Notes and Minutes of Dissent		18-20
—proposal to make them a penal offence—		
Appendix IV	10	45
—their origin		
Notes and Minutes of Dissent		17-18
5. Defector		
—definition of		
Report	19	7
Notes and Minutes of Dissent		27, 28
—barring appointment of, as a Minister		
Report	19	7
Notes and Minutes of Dissent		23, 27, 29, 31, 34

	Paras	Pages
—disqualification of, from continuing to be an MLA/MP		
Report	31-33	9-10
Appendix IV	4-9	43-45
Notes and Minutes of Dissent		27, 33, 34
—disqualification of, from being chosen as an MLA/MP for a prescribed period		
Report	31-33	9, 10
Appendix IV	4-9	43-45
6. Government		
—stability of		
Report	15	7
Notes and Minutes of Dissent		18
7. Governor		
—his position in regard to dissolution of the Assembly		
Notes and Minutes of Dissent		25
—his right to judge the strength of majority party		
Notes and Minutes of Dissent		31
8. Independents		
Report	1	1
Appendix IV	6	14
Notes and Minutes of Dissent		22, 27, 37
9. Law relating to Salaries & Allowances of the Ministers		
Appendix IV	13	16
10. Lok Sabha		
—its resolution on defections		
Report	2	1-2
11. Observance of political morality		
Report	11(c)	1-5
Appendix IV	3	12-43
12. Parliament		
—suggestion for its directions to President/Governor regarding formation of alternative government, prorogation and dissolution of legislatures etc.		
Notes and Minutes of Dissent		32
13. Political Parties		
—code of conduct for		
Report	12-14	5, 6
Appendix IV	3	42, 43
Notes and Minutes of Dissent		29, 33

	Paras	Pages
—penalty to, for admitting detector(s)		
Report	20	7
Notes and Minutes of Dissent		28, 31, 32
—polarisation of		
Report	11(b) (ii) &(iii)	4
Notes and Minutes of Dissent		18
—reducing their number		
Appendix IV	21	48
Notes and Minutes of Dissent		16
—registration of		
Report	34	10-11
Appendix IV	21	48
—role of, in Indian parliamentary system		
Report	15	6
—Standing Committee or Board of		
Report	13	5
14. Prime Minister/Chief Minister		
—barring appointment as, of a person other than a member of the Lower House		
Report	16-18	6, 7
Notes and Minutes of Dissent		15, 16, 21, 28, 29, 33 36, 37
15. Recall		
—provision for, in our Constitution		
Report	30	9
Appendix IV	22	48
Notes and Minutes of Dissent		21, 22—24, 28
—provision for in other Democracies		
Report	30	9
Notes and Minutes of Dissent		23
16. Representation of the People Act, 1951		
Report	31	9
Appendix IV	9	45
Annexure III(A) & (B)		51, 52
Notes and Minutes of Dissent		32

REPORT OF THE COMMITTEE ON DEFECTIONS

Introduction

Following the Fourth General Election, in the short period between March, 1967 and February, 1968, the Indian political scene was characterised by numerous instances of change of party allegiance by legislators in several States. Compared to roughly 542 cases in the entire period between the First and the Fourth General Election, at least 438 defections occurred in these 12 months alone. Among Independents, 157 out of a total of 376 elected joined various parties in this period. That the lure of office played a dominant part in decisions of legislators to defect was obvious from the fact that out of 210 defecting legislators of the States of Bihar, Haryana, Madhya Pradesh, Punjab, Rajasthan, Uttar Pradesh and West Bengal, 116 were included in the Councils of Ministers which they helped to bring into being by defections. The other disturbing features of this phenomenon were: multiple acts of defections by the same person or set of persons (Haryana affording a conspicuous example); few resignations of the membership of the legislature or explanations by individual defectors; indifference on the part of defectors to political proprieties, constituency preference or public opinion; and the belief held by the people and expressed in the Press that corruption and bribery were behind some of these defections.

Resolution in Parliament

2. In this situation, it was natural for widespread concern to be voiced by leaders of opinion and the Press all over the country for the preservation of political stability and safeguarding the interests of the people. What was most heartening was the feeling of deep concern over these unhealthy developments in national life on the part of the leaders of political parties themselves. Parliament mirrored this widespread concern. On August 11, 1967, Shri P. Venkatasubbiah moved a resolution in Lok Sabha recommending the setting up of a high level Committee to go into the problem and make recommendations. The resolution was discussed on November 24 and December 8, 1967, and in its final form as passed unanimously by the Lok Sabha on December 8, 1967, read as follows:

“This House is of opinion that a high-level Committee consisting of representatives of political parties and constitutional experts be set up immediately by Government to consider the problem of legislators changing their allegi-

ance from one party to another and their frequent crossing of the floor in all its aspects and make recommendations in this regard."

Constitution of the Committee

3. This resolution was examined by Government and it was decided to set up a Committee composed of—

Union Home Minister—Chairman.

Union Law Minister—Member.

Union Minister for Parliamentary Affairs—Member

Representatives of the 8 political parties and the three Independent Groups recognised by the Speaker in the Lok Sabha

Shri P. Venkatasubbaiah—Member.

Shri Jaya Prakash Narayan—Member.

Shri H. N. Kunzru—Member.

Shri C. K. Daphtary—Member.

Shri H. M. Seervai—Member.

Shri M. C. Setalvad—Member.

Shri Mohan Kumaramangalam—Member.

4. The Union Home Minister wrote to all the members on February 8, 1968. Shri H. M. Seervai regretted his inability to be a member of the committee on the ground that he would be unable to attend any of its deliberations as his work in Bombay kept him fully occupied. The political parties and Independent Groups which had been addressed by the Home Minister responded affirmatively to the invitation, assuring their co-operation in dealing with this phenomenon. Their nominees on the Committee are—

1. Professor N. G. Ranga—Swatantra.
2. Professor Balraj Madhok—Jan Sangh.
3. Shri S. N. Dwivedy—P.S.P.
4. Shri Madhu Limaye—S.S.P.
5. Shri Bhupesh Gupta—C.P.I.
6. Shri P. Ramamurti—Communist Party Marxist.
7. Shri K. Anbazhagan—D.M.K.
8. Shri N. C. Chatterjee—Progressive Group.
9. Shri Raghuvir Singh Shastri—Nirdaliya Sangathan.
10. Dr. Karni Singh—Independent Parliamentary Group.

5. The final composition of the committee and the names of its members can be seen in Appendix I.

Meetings of the Committee

6. The Committee held six meetings—all of them in New Delhi—on the dates shown below:

First meeting—March 26, 1968.

Second meeting—April 18, 1968.

Third meeting—May 12, 1968.

Fourth meeting—July 14, 1968.

Fifth meeting—August 8, 1968.

Sixth and final meeting—September 28, 1968.

7. The members present at these meetings and the list of papers and notes circulated to the members can be seen in Appendices II and III respectively.

8. The first meeting devoted itself to a brief exploratory discussion on the various aspects of the problem of defections. At the second and third meetings the members placed their considered views on the basis of the papers and notes circulated by the Ministries of Home Affairs and Law.

Reference of the legal and constitutional issues to the Lawyers Group

9. Following the third meeting, the Union Home Minister wrote on May 18|20, 1968 to Shri P. Govinda Menon, Union Law Minister, Sarvashri M. C. Setalvad, Mohan Kumaramangalam, C. K. Daphtary and N. C. Chatterjee, stating *inter alia* that he felt—

“there has been a thorough discussion of the various aspects of the problem and the possible remedial measures, and it is time the committee drew up its report for being placed before Parliament at its next session. It occurs to me that it would conduce greatly to a clear grasp of the issues involved if the constitutional experts on the committee informally confer amongst themselves in the first instance, consider the constitutional and legal remedies suggested and make available to the main committee their comments and recommendations on the feasibility of the courses of action proposed and the lines on which effect could be given to them.”

He suggested that it might be convenient if the Law Minister convened the sittings of the Group.

Meeting of the Lawyer Members

10. Accordingly, the Union Law Minister convened the meeting of the Group to be held on July 4 and July 5, 1968 at Ootacamund. The Group met in three sessions: the first two on July 4 were attended by Sarvashri M. C. Setalvad, C. K. Daphtary and S. Mohan Kumaramangalam; at the third session on July 5, the Union Law Minister (who could not come the previous day) joined the discussion. Shri N. C. Chatterjee to whom also the Union Home Minister's letter was addressed could not attend the meeting for reasons of health. The recommendations made by the Lawyers Group to the full Committee can be seen in Appendix IV. These were considered at the fourth and fifth meetings held on July 14 and August 8, 1968. The Committee finalised its conclusions at the sixth meeting held on September 28, 1968

Considerations placed before itself by the Committee in drawing up this report

11. It now remains for this Committee to make its recommendations. In drawing up this report the Committee has placed before itself the following considerations:

- (a) there can be no perfect or infallible deterrent for the kind of political defections that are rooted in political irresponsibility and opportunism and create instability, besides bringing the functioning of the democratic institutions into disrepute.
- (b) The task of devising remedial measures for a complex political problem has to balance carefully the need for ensuring political stability with—
 - (i) the natural processes of organic growth of parties;
 - (ii) the inevitability of a period of transition preliminary to the forging of ideological polarisation or clarity, with uncertainties attendant on the transition; and
 - (iii) the avoidance of rigidity which would impinge adversely on honest and genuine dissent or change of convictions or on readjustment of party alignments, in the form of mergers, splits, etc., as part of the process of reaching ideological polarisation or clarity.
- (c) The best legislative or constitutional devices cannot succeed without a corresponding recognition on the part of

political parties of the imperative necessity for a basic political morality and the observance by them of certain proprieties and decencies of public life, and their obligations mutually to one another and in the last analysis to the citizens of this country; and

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

Recommendations

I. Ethical

A code of conduct for political parties

12. The predominant view in the Committee has throughout been that regardless of the legislative and constitutional measures against political defections, a lasting solution to the problem can only come from the adherence by political parties to a code of conduct or set of conventions that took into account the fundamental proprieties and decencies that ought to govern the functioning of democratic institutions.

13. Adoption of such a code will serve little purpose without a machinery or sanctions to ensure its observance. One suggestion placed before the Committee was that this could be achieved by having a Standing Committee or Board comprising leaders of political parties and men with legal background who were highly regarded in the country for their experience of public affairs, objectivity, integrity and political neutrality. Any political party which had a grievance against another for non-observance of the code could take up the matter before the Board which, if the material before it was adequate, could convey its censure or disapproval which in due course would acquire moral sanction. When the Board censured a particular member for violating political proprieties, the political parties could be asked to ensure that he was kept out of public life for a prescribed period.

14. The Committee feels that the principle underlying this suggestion is sound, although the manner of giving it a concrete shape will have to be gone into in greater detail from the political as well as the practical point of view. As a first step, the Union Home Minister could perhaps write to all political parties and convene a meeting of their representatives. Beyond that the Committee does not think that there should be any official initiative in the matter;

it should be left to the political parties themselves to arrive at a code and to decide on the composition of the Committee to observe its implementation by discussions among themselves.

II. Political

Inculcation of a clear understanding of the nature and character of representation and the duties of an elected representative

15. The Committee considers that deriving from the theories and practice elsewhere (and, where necessary, even regardless of them) and the inherent requirements of the situation, a sign-post should be placed to guide the functioning of political organisations and representative institutions in this country. India has adopted the parliamentary system of Government, which is based on the party system. In practice it operates by one of the parties being assured of a majority support of its members entering as representatives in the legislatures. Election is primarily a contest among parties to have their candidates returned by the electorate from as many constituencies as possible depending on their organisation and resources. For this purpose, parties put up candidates who are bound to them by the very fact of sponsorship and by their allegiance to their programme. This tie and this allegiance is what confers predictability on the functioning of representative bodies. Without this predictability Governments formed by parties cannot be strong and stable. A representative, then, should be deemed to be bound to the party under whose aegis he wins an election.

III. Constitutional

(1) Barring appointment as Prime Minister/Chief Minister of a person who was not a member of the Lower House.

16. There was a strong current of opinion at all stages of the discussion in the Committee that no one who was not initially a member of the Lower House should be appointed as Prime Minister/Chief Minister.

17. However, some members of the Committee brought up the possibility of certain contingencies arising in which serious difficulties might arise if a person who was a member of the Upper House or was not a member of either House, was debarred from being appointed as Prime Minister/Chief Minister. In the view of these members situations were also conceivable in which the entire opposition made a strong bid to get a leader of a party defeated in an election so that he did not succeed in becoming Prime Minister/Chief Minister, although the appointment of such a person would have been widely acceptable to the party and would have conduced to the stability of the Government.

18. After close and careful consideration of all aspects of the matter, the Committee recommends that no person who is not a member of the Lower House should be appointed Prime Minister/Chief Minister. It is advisable to make the constitutional amendment giving effect to this recommendation prospective so that it does not affect the existing incumbents in office.

(2) *Barring the appointment as Minister of a defecting legislator for a prescribed period or until he goes back to the electorate and gets re-elected*

19. The Committee recommends that a defector should be debarred for a period of one year or till such time as he resigned his seat and got himself re-elected, from appointment to the office of a Minister (including Deputy Minister or Parliamentary Secretary) or Speaker or Deputy Speaker or any post carrying salaries or allowances to be paid from the Consolidated Fund of India or of the State or from the funds of Government undertakings in the public sector in addition to those to which the defector might be entitled as a legislator. For the purpose of this recommendation, the Committee is agreed on the following definition of a defector:—

“An elected member of a legislature who had been allotted the reserved symbol of any political party can be said to have defected, if, after being elected as a member of either House of Parliament or of the Legislative Council or the Legislative Assembly of a State or Union Territory, he voluntarily renounces allegiance to, or association with such political party, provided his action is not in consequence of a decision of the party concerned.”

20. A view was, however, expressed in the Committee that it was not enough to penalise individuals alone and there must be some provision whereby the parties which admitted defectors could also be penalised*. According to this view, if any recognised political party admitted a defector as defined above as a member or associate member into its legislative party, the recognition and the reserved symbol of that party should be withdrawn, at least for a period of two years. The consensus in the Committee was not in favour of accepting this view.

(3) *Limiting the size of the Council of Ministers*

21. As articles 75 and 164 of the Constitution are at present worded there is no limit on the number of Ministers that the Prime Minister/Chief Minister may advise the President/Governor to

* Shri Madhu Limaye's support to the prohibition against individual's was conditional on parties who admitted defectors also being penalised.

appoint to the Council of Ministers. In view of the significant part played by the offer or denial of Ministerships in political defections, there was unanimous agreement in the Committee that limiting the size of the Council of Ministers might not only act as a damper on potential defectors, but might enable the Prime Minister/Chief Minister to resist pressures which he might otherwise be unable to withstand. There was also agreement that the size of the Cabinet should have some relation to the size of the legislature.

22. The formula before the committee was that the size of the Council of Ministers should not exceed 10 per cent of the strength of the Lower House in the case of unicameral, and 11 per cent of the strength of the Lower House in the case of bicameral, legislatures; in regard to States and Union Territories where the strength of the legislature was below 100, the size of the Council could be fixed so as not to exceed 15 per cent of the strength of the Lower House.

23. The Chairman and six other members, namely, Sarvashri P. Govinda Menon, Ram Subhag Singh, M. C. Setalvad, N. C. Chatterjee, P. Venkatasubbaiah and Raghuvir Singh Shastri were in support of the formula.

24. Shri P. Ramamurti was of the view that the percentage should be reduced to 8 1/3. Shri Madhu Limaye's formula was one-twelfth of the total elected strength of the Lower House (except for smaller States).

25. Five members, namely, Sarvashri N. G. Ranga, Balraj Madhok, Jaya Prakash Narayan, K. Anbazhagam and Madhu Limaye urged that in addition to the percentages, there should be a numerical ceiling of 50, so that the size of the Council of Ministers would be as in the formula, or 50, whichever was less.

26. Shri Bhupesh Gupta's proposal was that the size of the Council of Ministers should be 10 per cent of the Lower House or 30 whichever was less. If, however, the other members agreed to a numerical ceiling of 50, he was prepared to go along with them.

27. In the absence of agreement on the exact size of the Council of Ministers, the Committee has decided to present the different points of view as expressed by members so that they provide a useful basis for discussion in public and in Parliament.

(4) Right of dissolution being accorded to the Council of Ministers

28. On the merits of the proposal to accord the right of dissolution to the Council of Ministers, two distinct but opposite views were expressed in the meetings of the Committee with equal conviction. One view was that the power of dissolution would be a

potent weapon in the hands of a Prime Minister/Chief Minister for enforcing party discipline, curbing opportunistic transfers of party allegiance and ensuring political stability. The other view was that the practice in other democracies based on Western parliamentary model had itself varied from time to time and from situation to situation. According to this view, to insist on a fixity of interpretation of constitutional provisions in favour of the right to dissolution or even of making it explicit by amendment or convention, would, in a country like India where conventions were still being developed mean depriving the growth of constitutional processes of dynamism and flexibility. Further, granting of this right might in effect be punishing the people by exposing a whole State to the turmoil of an election. In between dissolution and the new election, the administration would come to a virtual stop and huge expenses would be incurred.

29. In the face of these divergent views, the Committee does not consider it necessary to make any recommendation on a proposal which in its opinion is also not very germane to the problem of defections.

(5) Provision for recall

30. Some of the Constitutions like those of Switzerland, Rumania, Czechoslovakia, USSR and some of the States of USA have a provision for removing a public functionary, including an elected representative, before the end of his term of office. On this analogy, a similar provision to be incorporated in our Constitution was strongly advocated by some of the members of the Committee. The Committee as a whole, however, is not convinced that this provision would be advisable or practicable for this country.

IV. Legislative

- (1) *Disqualifying a defector from continuing to be a Member of Parliament/State Legislature, and, additionally, on proof of acceptance of gratification, office of profit etc., disqualifying him from being chosen as a member for six years*

31. The Lawyers-Group in its report to the main Committee had advised that it was possible to provide by a special legislation or by way of amendment of the Representation of the People Act that a legislator who renounces the membership of, or repudiates his allegiance to, a political party on whose symbol he might have been elected, shall be disqualified from continuing as a member of Parliament/State Legislature; he would, nevertheless, be free to stand for election again if he so wished, and to sit as a member in case he got

elected. It was possible, in the view of the Group, to provide further that where a legislator defected for a pecuniary advantage or for an office of profit, he would be disqualified from being chosen as a member of Parliament/State Legislature for a prescribed period. The Group based this view on the argument that the procedure under Rule 5 of the Conduct of Election Rules, 1981, established a proximate and perceivable relationship between a political party recognised by the Election Commission under that rule for the purpose of allotment of reserved symbols and the candidate sponsored by that party.

32. Several members of the Committee raised important objections to the proposal made by the Lawyers-Group. Some of these objections were—

- (a) While the Lawyers-Group had ruled out making defection a penal offence on the ground of existence of fundamental right under Article 19(1)(c) of the Constitution, they had advised that civil action in the form of disqualifying the defector from further membership was possible. The distinction sought to be made between the two actions in their relation to the fundamental right to form association was not clear and did not seem fully justified.
- (b) Any new disqualification that might be imposed should be of the *genre* mentioned in Articles 102 and 191. The proposed disqualification for defection was of an entirely different category and might not be in the spirit of the provisions of those articles.
- (c) The proposal would have the effect of freezing the political parties in their present state and thereby hinder their organic growth which was an essential part of democratic process. In the present situation it would be harmful to do anything that would prevent polarisation of political forces; splits, mergers, amalgamations etc. were part of the process of ideological consolidation and they should not be interfered with.

33. The Committee could not arrive at an agreed conclusion on this proposal which, therefore, was dropped from consideration.

(2) *Registration of political parties*

34. This was one of the suggestions made at the meetings of the Committee. The Lawyers-Group took notice of it but did not feel called upon to go into its merits, as it felt that its relevance to the problem of defections was marginal. The Committee agrees with

this view and does not see any advantage in pursuing the suggestion further.

35. The Committee trusts that action on its recommendations will be taken as early as possible.

Y. B. CHAVAN,
Chairman

RAM SUBHAG SINGH,
P. GOVINDA MENON
P. VENKATASUBBAIAH*
N. G. RANGA
BHUPESH GUPTA*
P. RAMAMURTI*
MADHU LIMAYE*
S. N. DWIVEDI*
BALRAJ MADHOK*
K. ANBAZHAGAN*
N. C. CHATTERJEE,
KARNI SINGH
RAGHUVIR SINGH SHASTRI
M. C. SETALVAD
JAYA PRAKASH NARAYAN
H. N. KUNZRU*
C. K. DAPHTARY
MOHAN KUMARAMANGALAM

New Delhi,
the 7th January, 1969.

* Approved the report subject to explanatory/dissenting note attached.

NOTES AND MINUTES OF DISSENT

NOTES & MINUTES OF DISSENT RECEIVED FROM MEMBERS

(1) Shri K. Anbazhagan

When I present my dissent on the question of barring appointment as Prime Minister/Chief Minister of a person who was not a Member of the Lower House, I feel it morally incumbent to make my position clear for a better appreciation of my view point on this vital and crucial issue. First of all I do share the doubts of some of my other colleagues in the Committee about the relevance of this issue to the problem of defections. Though you have assured that the principle that is being enunciated will not be applicable to the present incumbents at the Centre and the States, I am convinced that for the future also this rigid principle cannot be conducive to the natural growth of healthy, stable and enlightened party governments at different levels.

Though it is natural and desirable too to elect the Prime Minister/Chief Minister from the Members of the Lower Houses it is neither advisable nor reasonable to prevent popular and outstanding leaders of any majority ruling party from being elected as its leader from the upper chambers. On some occasions, it may be found that the most respected and acceptable leader of a majority party is a member of the Upper House or was not a member of either House. When the Lower House expresses its unequivocal support and confidence in a Chief Minister not only with a view to ensure discipline in the party but also in the larger interests of efficient and stable Government, there is no justification for any bar on his/her being continued as the Member of the Upper House. But I would like to draw a line of distinction between those nominated by the President/Governor to the Upper Chamber and those elected from certain constituencies such as Graduates, Local Bodies, etc. Normally any person so nominated by the President/Governor should not be elected as Prime Minister/Chief Minister. On any occasion, if such a situation arises. I am definitely for the inclusion of the provision that such a nominated person should be required to get himself elected within six months to either house.

Further I wish to remark that by making an amendment of the Constitution as proposed by the majority members of the Committee and demanding the election of the Prime Minister/Chief Minister to the Lower House, a lot of public expenditure has to be incurred which is neither necessary nor desirable. Such a procedure will

entail further tensions and unhealthy reactions which may retard the smooth functioning and progress of the State Governments.

In the circumstance, I strongly feel that rigidity as envisaged may be given up and the principles enunciated by me in paras above and in my dissenting note may please be given due consideration while drafting the final constitutional amendment in this regard.

(2) Prof. Bal Raj Madhok

While I am in general agreement with the draft report of the Committee on Defections, I would like to stress the following points for the consideration of the Government and the Parliament when they consider this report

Defections are symptoms and not the disease. Unless there is clear diagnosis of the disease and remedies to root it out are found, symptoms in the form of defections and other abnormalities will continue to appear inspite of the suggestions made in this report.

The real malady is the absence of ideologically coherent and cohesive parties and lack of political education of the electorate which, in the ultimate analysis, can be the only effective check on wayward behaviour on the part of elected members.

So long as a number of parties with more or less the same ideology and programme continue to exist, the ideological and ethical considerations in the act of defection will remain in the background. Rather it would be useful if more and more legislators with similarity of views on broad question of national policy get together whether through merger of parties or change of parties. The objection arises only when such a thing is done only for pecuniary or such like considerations of personal gain. The suggestions like ceiling on the strength of Cabinets and ban on a defector holding a ministerial or other posts of profit for one year or till he seeks a fresh mandate of the electorate can tackle that aspect. But the multiplicity of parties and the omnibus character of some of the parties which lie at the root of the problem can be done away with only when the Constitution and electoral laws are suitably amended.

Failure to give due thought to this aspect may lead to undermining of people's faith in democracy and parliamentary system itself which will make the suggestions about preventing defections irrelevant and unnecessary.

The picture that will emerge after the mini-general election scheduled to be held in February, 1969, needs to be carefully watched before basic rethinking on the whole pattern of the political system

and parties is undertaken. But that cannot be avoided or postponed indefinitely. That is the task to which all those who want democracy to survive the storms that are ominously rising to engulf it must address themselves to.

(3) Shri Bhupesh Gupta

I am in disagreement with the basic understanding and approach of the Report in dealing with the question of defections. I humbly submit that the phenomenon of defections has not been correctly comprehended in the report. This is why the remedial measures, proposed are disappointing. I doubt if the recommendations would at all be regarded as worth the effort made by the Committee on Defections. Perhaps our failure on this score was unavoidable in view of the fact the Committee was not only heterogenous in its political complexion but was comprised of the representatives of sharply opposing social and political forces. The representatives of the Congress Party in the Committee were guided by their own considerations which, in my view, stood in the way of arriving at an integrated scheme of principled recommendations for facing the problem posed by defections. The fear of the loss of power weighed heavily on our deliberations. The work of the Committee ultimately boiled down to pointless moralising and to the kind of shadow-boxing that one comes across when there is an attempt to evade the real issues and yet appear as if such issues are being grappled with.

It has been my misfortune that I could not convince the majority of my esteemed colleagues in the Committee, but I am sure they will bear with my present note of dissent as representing a certain understanding and approach different from what has been spelled out in this report. It will be now for Parliament and the people to consider our divergent viewpoints and then help our political system to work out a correct, democratic solution to the problem of defections. It is hoped the discussion of what we have said in the report and notes of dissent will stimulate that process. Let me now proceed to make some general remarks about the genesis of defections

Defection in the sense of the crossing of the floor of the House is no new occurrence in bourgeois parliamentary democracy, especially under a multi-party system. This essentially reflects the fluidity of a country's political life and often the polarisation of its political forces. More fundamental contradictions and conflicts in society including those within the ruling class itself lie at the root of political fluctuations at parliamentary level. The process is liable to become all the more pronounced when the ruling class and the

parties variously representing it are in crisis and disintegrating. We are passing precisely through such a phase of crisis of bourgeois rule as well as of the rapid disintegration of its principal party—the Indian National Congress.

The real stability in the parliamentary system can arise only when the vacuum caused by the disintegration of the Congress is filled by a viable alternative to it, constituted, in our present-day conditions, by a united front of Left and democratic parties based on a common minimum programme and, of course, on united mass political movement on a national scale. Stability, therefore, has to be achieved by bringing about the change in the co-relation of class forces in the political life of the country. This would naturally imply the end of the exclusive control of the state power by the national bourgeoisie and, in day-to-day political terms, the replacement of the present Congress rule by a government of the Left and democratic front at the State and central levels as stated above.

When I say government of the Left and democratic front I do not have in mind mere *ad hoc* alliances and coalitions at the top. My conception of the front is more fundamental and is to be understood in terms of a decisive shift of popular forces to the Left. Polarisation in this direction will, however, be a long-drawn process, marked by intense struggles on the one hand and by periods of instability and uncertainty on the other. Unhealthy and opportunistic practices such as unprincipled and dishonourable defections will be greatly reduced only when Left and democratic forces secure stable majorities in the Parliament and State Legislatures and the political life of the country somewhat stabilises on the basis of political polarisation. It is idle, therefore, to think that we can successfully tackle the problem of unprincipled defections without this basic change.

Coming to defections, it will be noted that since the First General Election, defections have always been occurring. In the earlier years prior to the Fourth General Election, there were roughly 542 defections in the Assemblies. However, after the Fourth General Election alone, 438 defections have taken place in the State Legislatures (figure up to the middle of 1968). This would seem a phenomenal rise. But the 1967 General Election also significantly changed the political map of the country.

This sudden rise in the phenomena of defections has naturally attracted public attention. If the Congress is now somewhat agitated over it, there is again reason for it. Because the defections have ceased to be a one way traffic, more or less open only for the

Congress as it used to be until the time of the Fourth General Election. Between 1957 and 1962 Congress welcomed and received 120 defectors into its fold in the Legislative Assemblies. While another 8 was received in Lok Sabha by the Congress. Between 1962 and 1967 similar defections to Congress in the Legislative Assemblies amounted to 299 and in the Lok Sabha to 17. Thus the "trade" was monopolised by the Congress Party. It was of course a part of Congress Party's strategy to hold on to power and to harass the Opposition. It will be remembered that in those days the Congress made no noise about these wholesale defections. Nor did any Congress member in Parliament come forward to sponsor a non-official resolution on defections.

After the Fourth General Election the Congress received, again, the highest number of defectors within its fold in the State Assemblies—139. But unlike in the past, it also lost 175 MLAs to non-Congress side. The traffic had become now a two-way process. This has to be viewed against the background of the results of the Fourth General Election and the growing disintegration of the Congress. After all the losses of the Congress are a sign of its disintegration; the gains of the Congress through defection on the other hand is clearly an evidence of the attempt to negate the verdict of the Fourth General Election and to cling and crawl back to power. In fact, the resolution of the Hyderabad annual session of the Congress (January 1968) embodied the strategy to thus oust the non-Congress popular governments in one State after another. Of course, on the non-Congress side, too, attempts were made in certain quarters to defeat this Congress strategy through defections from the Congress. But the main blame for the unholy political "horse-trading" must rest with the Congress which has not only more inducements to offer to defectors but which also enjoys the power at the Centre and is in a position to use that power including the office of the Governor to further its partisan political ends. It is not accidental that the office of the Governor has attracted a lot of public odium after the Fourth General Election. In West Bengal, for example, the Raj Bhavan has been associated with the moves to oust the UF ministry through defections. In this connection it is perhaps noteworthy that out of the 95 defectors in Bihar, Punjab, Rajasthan and West Bengal from the non-Congress parties/government to the Congress or Congress—supported governments 64 were given ministerships. This again is not something new on the part of the Congress.

Immediately after the First General Election (1951-52) the Congress started the game. In the composite Madras State the

Congress won only 152 out of 375 seats. It organised defections on a large-scale and Rajagopalachari was inducted as the leader of the Congress legislature party although he was not even a member of either House. He was invited by the Governor to form a Congress ministry. Through the instrumentality of defections Congress was transformed into a majority. In Andhra in 1954 the Congress accepted Sri Prakasam and 12 others who had defected from the PSP. Sri Prakasam formed his shortlived Congress ministry. In Kerala the Congress organised disruption of the non-Congress Opposition by supporting a minority government headed by Pattom Thanu Pillai and by making the latter a Governor. These are only some of the glaring instances of defections inspired and organised by the Congress before the Fourth General Election. This pattern has been further carried forward after the Fourth General Election.

We have before us the examples of P. C. Ghosh ministry in West Bengal, Mandal ministry in Bihar and Gill ministry in Punjab—all products of defections organised by the Congress. The Congress tactic of support to minority governments was an open invitation to defections.

In other States such as Rajasthan, U.P., Manipur, and Pondicherry attempts have been made to organise defections in some cases successfully. In U.P. the Vidhayak Dal ministry was dismissed and Assembly suspended to give opportunity to the Congress to manipulate a majority for themselves and thus get back to power. This did not of course happen and the Assembly was dissolved. It is not necessary to go into the details to emphasise the fact that the main inspiration for defections as a political strategem in our parliamentary set-up continues to come from the Congress. This is however not to say that some non-Congress elements are not to be blamed.

Here it is perhaps necessary to make one observation. Having regard to the realities of our political life, all defections cannot be tarred with the same brush. It is true that large number of defections have taken place for dishonourable considerations including personal gains, such as ministerial office. But at the same time there have also been defections notably from the Congress which were not motivated by such unethical or improper considerations. Important Congress leaders have left the Party in a protest against what they consider to be betrayals and unwholesome practices including encouragement of defections. We need not go into this larger political aspects of the matter here. Only I would like to

stress that the defections from the Congress is a process inherent in the present political situation.

In order to provide an answer to the current problem of defections I made on behalf of the Communist Party of India the following integrated proposals in the very beginning of the work of this Committee at its second meeting.

- (i) Definition.—Defection for the purposes of this Committee is to be defined as crossing of the floor i.e. to say from the government side to the Opposition and vice versa.
- (ii) The right of recall for the electorate of the constituency of the defecting member;
- (iii) The right of dissolution of the Lok Sabha or the Assembly by the Council of Ministers concerned. Both the President and Governor shall be under obligation to dissolve the House if so advised by the concerned Council of Ministers, still enjoying the majority in the House and not defeated by a vote on the floor. After such dissolution the new House when it is constituted again shall not, however, be dissolved before the expiry of a period of one year if it can have a Council of Ministers enjoying the majority of the House. This safeguard is against the possible misuse of the right of dissolution.
- (iv) The size of the Council of Ministers shall be restricted to 10 per cent of the total members of the lower House or 30 whichever is less
- (v) The Prime Minister must necessarily be a member of the Lok Sabha. The Chief Minister must likewise be a member of the Vidhan Sabha.
- (vi) Except immediately after the General Elections and before the House meets for the first time, Governor shall not assess the strength in his individual judgment. Whether a Council of Ministers enjoys the majority or not must be determined on the floor of the House and not in any other way.

It would have been noted that only my proposal in regard to appointment of the Prime Minister and Chief Minister has been accepted. The proposal about the size of the Council of Ministers has been accepted only partially. The rest of the more important proposals, unfortunately, did not find favour with the majority in the Committee.

In this connection, I would like to make certain observations. The Lok Sabha resolution of December 8, 1967, to set up this Committee on Defection spoke of "the problem of legislator changing their allegiance from one party to another and their frequent crossing of the Floor....". A mere change of party does not necessarily disturb the political or administrative stability in a parliamentary set-up. Only when defections are from one side of the House to another and take place frequently can the stability be threatened or affected. In fact, it is primarily because of this consideration that the defections after the Fourth General Election engaged so much public attention. This was, again, the main consideration for the Lok Sabha resolution of December 8, 1967. Unfortunately, the majority in the Defection Committee has thought it fit to widen the scope of the definition to include even defections from one Party to another Party on the same side of the House without involving any crossing of the floor. In the absence of provision for recall which the Committee did not accept this would seem an undue interference in the working of our parliamentary system and in the political life of the country. This sort of interference would certainly suit the Congress which is interested in maintaining its position but which would not much serve democratic principles or norms. Independents are not covered by this definition and they are left free to join this or that party. This would put a premium on being an Independent from the point of view of those who believe in unprincipled change of loyalties. According to my proposal independents would not have to be so excluded. I suggested that immediately after their election all Independents will be called upon to declare before the Speaker as to whether they sit on the government side or on the Opposition side so that any change of side could be considered as an act of defection on their part

Recall.—In the Constituent Assembly an amendment was proposed to provide for recall. But it hardly received attention. Those were the sun-shine days of the Congress when few Constitution-makers thought that within less than two decades of the Constitution our parliamentary institutions would have to reckon with such land-slides from the Congress-party and so many defections. Now that the issue is eminently before us it should be left to the electorate of the constituency of the defector to decide as to whether or not the defector should be recalled for his action. I do not see why we should not subject defections to the judgment of the electorate instead of just bemoaning what is happening or trying to settle the matter at the top without referring it to the electorate. Once the principle of recall is accepted, appropriate provisions can be made to work it. Recall is undeniably a democratic method. I cannot agree with the majority in the Committee when it says that

"it is not convinced that this provision would be advisable or practical for the country." This is a sweeping statement. I do not understand why it is considered inadvisable. The majority has offered no cogent reason whatsoever. Nor do I understand why it should be regarded as impractical either. Once upon a time some people thought that adult franchise and the parliamentary institutions created by our Constitution would not work. But those prophets of defeatism have proved wrong. There are provisions for recall, for instance, in Switzerland and in some Federal States of the U.S.A., not to speak of the socialist countries. There is a notion that recall would mean too many bye-elections and needless difficulties. This is a fallacious argument. Because the provision for recall will act as an effective deterrent against unprincipled, opportunistic defections and hence against frequent occurrence of the same. Where a member has crossed the Floor of the House in defence of the interest of the masses or for a truly popular cause it is very unlikely that recall procedure is going to succeed although there may always be some to ask for recall. But here, again, if the crossing of the floor has real public approbation, those asking for recall for factional or narrow partisan considerations may not secure the support from the requisite number of voters to make a valid claim for the initiation of the recall process. I had proposed that in order to start the recall procedure atleast 30 per cent of the electorate must express their desire in a specified manner that the defecting member should be recalled. Those who choose to defect for the lure of office or similar other gains which cause public resentment will not rush to take the step. Thus, the provision for recall may well reduce the number of unprincipled and opportunistic defections. There is no need therefore to exaggerate the practical problems and difficulties.

The Committee has recommended that a defector should be debarred for a period of one year from appointments to certain offices and positions specified in the report unless, in the meanwhile, he has resigned his membership and has got himself re-elected. This is supposed to be an anti-dote against defection for lure of office or similar other advantage. I do not deny that in some cases this may be so. But the recommendation has other serious implications. Anyhow, it does not meet the requirements of our concrete situation.

According to the report a mere change of party would be regarded as defection even if that does not involve the crossing of the floor or any change in the relative strength of the Government and the Opposition. If a member, who has been elected as a United Front nominee and on the basis of United Fronts manifesto, prefers to change his party affiliation within the Front itself or becomes an

Independent but remains within the Front, even then he will be regarded as having defected. The disqualification proposed will apply in his case. Such change of political affiliation within the four corners of a given front or a coalition of parties surely does not affect the stability of a government.

There are many other ways of rewarding tainted defections by offering offices and positions not specified in the report. Contracts, business permits and appointments to important and prestigious posts, not carrying salaries and allowances from the Consolidated Fund or the funds of the Government undertakings in public sector are there to be offered as allurement and many of these are at the disposal of the Central Government which at the present moment happens to be under the control of the Congress Party. We have seen how Congress leaders defeated in the election are favoured.

Quite apart from these considerations, the report puts all defections and that too after widening the definition of defection, into one and same category. Suppose, an honest Congress leader leaves the Party in protest against certain admittedly anti-people policies or anti-democratic conduct of a Congress government, should he be black-balled and put in the same basket with those who defect for office or for similar other personal gains? It will not be denied that a defection is always liable to give rise to controversies, some approving it while others denouncing it.

That is all the more reason why the electorate or the constituency of the defecting member should be brought into the picture in order to decide the issue and this is possible only if there is provision for recall. Disqualification should have some democratic sanctions and it should not be imposed arbitrarily from the top.

The debarment proposed in the report will of course admirably suit the convenience of the Congress Party which is interested in preventing defections of its legislators. No wonder that this proposal finds enthusiastic welcome in high Congress circles. I repeat, we are in favour of putting all cases of defections involving crossing of the floor of the House to the verdict of the electorate by giving the latter the right to recall. Let the voters and the people decide as to whether or not a defecting member should be penalised.

Right of Dissolution of the Assembly.—Leaving out other considerations, this right expressly given to a Council of Ministers which is sought to be ousted by defections is an effective deterrent. The would-be defectors from the government side would always have to reckon with the possibility of facing a mid-term election instead of enjoying the rewards for that defection in the form of ministership

and otherwise. This will also be a great check against minority governments being manipulated. This would be a very effective way in which large-scale unprincipled defections can be checked.

The position of the present Central Government in this respect is interesting. While they think that at the Centre the President is under obligation to dissolve the House whenever the Prime Minister gives him such advice, the Governor, however, has his discretion in the case of the State Assemblies. According to the views of the Central Government the Governor may or may not dissolve the House even if advised to do so by his Council of Ministers which enjoys the majority in the Assembly. There is no justification for this "double-standard". The position of the Governor should be put on par with that of the President. The Congress Government at the Centre has been accused that it uses the office of Governor to serve its partisan ends. One cannot overlook this fact.

In many countries with bourgeois parliamentary system, including the U.K. the right of dissolution is enjoyed by the Cabinet. There is no reason why similar right should not be expressly given to the Council of Ministers in the States of the Indian Union. It is argued that a provision of this kind would lead to frequent and frivolous dissolutions of the State Assemblies causing great inconvenience to the people and dislocation of the administration. There is no validity in the argument at all. After all, no party whether in government or otherwise would find it a pleasure to face mid-term elections and it stands to reason that if a government-party or a combination of parties in control of a government is faced with large-scale defections because of the big money or other corrupt practices, that party or parties should be given the right to meet the situation if necessary, by forcing the other side to face the electorate. This is not only a very desirable remedy but also essential from the point of view of better functioning of our parliamentary institutions. Large-scale defections in West Bengal, Punjab and Bihar would not have perhaps taken place, if the defectors knew that they would have to face mid-term elections following the dissolution of their respective Assemblies through the exercise of such right. I disagree with the majority of the Committee when it says that the provision for right of dissolution would "mean depriving the growth of constitutional process of dynamism and flexibility" or when it argues that agreeing to this right might in fact be punishing the people by exposing a whole state to the turmoil of a election. On the contrary, the existence of this right would make the would-be defectors from the government side to think ten times before defecting. This right of dissolution will provide safeguard against attempts to topple a government by means of unprincipled defections.

Size of Council of Ministers.—I do not see why the ceiling of 30 should not be accepted to govern the proposed formula of 10 per cent (in the case of unicameral legislature) and 11 per cent (in the case of bicameral legislature) of the Lower House concerned. It appears that one reason for the reluctance to accept the ceiling is that it would involve reduction of the present Council of Ministers at the Centre. In our view, the restriction on the size of the Council of Ministers including parliamentary secretaries where they draw additional salaries and allowances etc. is an important step. It is regrettable that even Shri Jayaprakash Narayan's proposal for fixing the governing ceiling at 50 did not find acceptance by the Home Minister. Since there was no agreement I stand by my original proposal for 10 per cent of the Lower House, subject to the ceiling of 30.

In conclusion I would like to point out that un-principled opportunistic defections are only manifestation of certain pervading unhealthy trends in our political life and these trends are sedulously fostered by monopolists and other vested interests and by their political henchmen. The intrusion of big money in our parliamentary system is largely responsible for political corruption. We do need constitutional and legal sanctions to fight corrupt practices including defections brought about through questionable means or for questionable purposes. Unfortunately, the Report fails to propose even the necessary minimum constitutional and legal remedies. It now remains for the healthy political forces and public opinion to assert themselves against all such corrupt practices in the working of our parliamentary system. Let us hope that when the representatives of the political parties meet to consider the Committee's proposals about a common code of conduct and a Standing Committee etc., better results will follow from that collective effort. I am sorry we could not, as a Committee, give a better account of ourselves.

(4) Shri S. N. Dwivedy

I have gone through the recommendations made by the Committee and I am rather disappointed at the final outcome. I am sorry I could not attend most of the meetings of the Committee owing to my illness and hence could not avail of the opportunity to explain my viewpoint fully to my colleagues in the Committee. I really was able to attend at a stage when the Committee had almost reached tentative conclusions and there was very little scope to introduce and discuss fresh points. This was a great handicap so far as I am concerned.

But I took care to raise some important points in my letter of the 18th April, 1968 to the Chairman of the Committee and I had

expected the Committee to discuss them. But some of them were never mentioned and when ultimately I was able to raise it, I felt the Committee was not in a mood to give any serious consideration to them.

While I admit that some of the recommendations might have a deterrant effect on defection, I do not think they will be able to check the evil in a satisfactory manner. I feel that a mere ban of one year for acceptance of office by a defector will not make much difference as various other dubious methods might very well be adopted to satisfy a defecting legislator. This object would be achieved only by a legal provision. Although I would have liked to further elaborate the definition of a defector, I am, for the present, satisfied with the present draft as far as it applies to organised political parties. Once this definition is accepted and since the Committee has suggested legal and constitutional amendments for implementing its various recommendations on the basis of this definition, I fail to understand the logic in not accepting the banning of crossing of floors by legislation. To me, it appears the only way to check this evil is to make a clear provision in the law to the effect that a defector would automatically cease to be a member of the Houses of Legislature. He is of course free to seek re-election if he so desires. This is the minimum that should have been agreed. There is considerable force in the argument that unless political parties follow some ethical and moral standards, no amount of legal bans would be able to solve the problem. But it should be remembered all political parties, more or less, are involved in this and their failure has brought about this unfortunate situation. Like individuals, parties have also their weaknesses and other failures. In the present fluid stage of our political development, legal enactment, like a moral code, can only fulfil the requirements of a stable political life. Let me hope that when Parliament discusses this issue, there will be no whip from the parties and members would be free to exercise their judgement and discuss the issue free from all prejudices.

I sincerely feel that not only political parties, but Independents should also fall into the category of defectors and since they are elected as Independents, they would have to pay the penalty of a defector if they also choose to follow a course of action which is different than the 'Independent' the electorate voted at the time of elections. Let us not forget next to the Congress Party, they are the largest group and any provisions to check defections which exclude this category would not be of much avail.

Secondly I suggested in my letter of the 18th of April another alternative which I would emphasise even now. This is to the effect

that if any party admits a defector into its fold its recognition by the Election Commission for a reserve symbol would be withdrawn. I have no objection to the modification made later by another member that this should be for 2 years. But I am sorry to note that the Committee did not even accept this. I strongly feel that if any party accepts a defector as defined by the Committee, it should forfeit its right of a reserved symbol for election for a limited period and that in order to prevent formation of multiplicity of parties, the Election Commission should not entertain any new party which is composed of defectors.

I entirely agree with the recommendation that the Prime Minister/Chief Ministers must only be from amongst the already elected members, but I do not fully agree that the size of the Council of Ministers should be 10 per cent of the elected strength of the legislature. This means that in the Lok Sabha, the Ministry's strength would be equal to the quorum of the House and the Council of Ministers would be able to carry on the business of the House even if other members are absent. In no case, I would agree to the number of Ministers at the Centre to be more than 40. In the State legislatures also, I would suggest a much smaller number.

I am in favour of the power for recall for a defaulting member. It is sound in principle. It will not only make defection impossible, it will also make an elected representative more responsive to the electorate and the electorate would have a right to remove the member if they feel that he has by his action forfeited his right to represent them before the full term of membership is over. But I would not insist on such a provision at this moment in view of the practical difficulties to implement this suggestion.

(5) Shri H. N. Kunzru

In the course of the discussions in the Committee about members of the legislatures who leave their parties, a distinction was made between an individual member leaving his party and a group, separating itself from its party. The Chairman himself expressed the view that a change of party loyalty by a group could not be treated in the same way as similar action by an individual. In a case pointed out in the Committee a large majority of the members of a party had left it. This should be brought out in the report so that the definition of defector may not be so narrow as to treat individuals and groups alike. It should also be made clear that the members of a party are entitled to leave it when their party follows a course which was not contemplated at the time of the General Election or which they honestly differ from. The definition, I believe, was

meant to cover both these points, but this has not been brought out in the report.

The report, following the decision of the Committee, bars the appointment of a person who is not a member of the Lower House as Prime Minister or Chief Minister. Some members thought that it would meet the needs of the situation if a member of the Upper House appointed as Prime Minister or as Chief Minister was required to get himself elected to the Lower House within a period of six months. I am impressed with the force of their arguments and I think that it will be a good compromise if the matter is reconsidered and their views are accepted.

The Committee has recommended that a defector should be debarred for a period of one year, or till such time as he gets himself re-elected after resigning his seat, from being appointed as a minister etc. I think that the period should not be more than six months.

(6) Shri Madhu Limaye

At the last and final meeting of the Committee on Prevention of Defections held in Delhi on the 28th September, 1968, it was decided that members of the Committee may, if they so desire, send their minutes of dissent on any of the points that came up before the Committee. I am giving below my views on the points on which I beg to differ from the views of the Committee as also the points on which I agree with the conclusions of the Committee.

I agree that the political parties in India should try to evolve a code of conduct and set up a Standing Committee to enforce it. Apart from the norms of political behaviour, the code should also discuss the question of the financial resources of political parties and publication of their audited accounts.

I am definitely of the view that the Chief Minister/Prime Minister-designate should be an elected member of the lower house of the State and Union legislature respectively.

With regard to the size of Council of Ministers, I strongly hold that there should be a restriction on its size both in terms of percentage as well as an upper limit or ceiling.

It is true that in a parliamentary form of government it is the privilege of the Prime Minister/Chief Minister to choose members of their Council of Ministers, nor do I deny that it is also his prerogative to decide the total number of such ministers in order to carry on effectively the work of the administration.

However, expansion of the Council of Ministers has of late been used by the ruling Congress Party to accommodate defectors from

non-Congress parties and dissuade potential defectors from its own ranks from leaving the party and thus perpetuate itself in office somehow. The opposition parties too, now in power in some States, have been unable to resist the temptation of emulating this bad example. The latest instance is the further expansion of the State Ministry in Madhya Pradesh.

In order to prevent the abuse of the prerogative and right conferred by the Constitution under Article 75 and 164 on the Prime Minister/Chief Minister it is absolutely necessary to restrict the size of these Councils of Ministers both at the Centre as well as in the States by a constitutional amendment.

It is true that even under a written constitution everything cannot be provided for through specific constitutional provisions. Certain healthy conventions and rules of the conduct have to be developed, and the ruling party, inevitably, has to take the lead in evolving them. However, the experience of the past 21 years shows that the initiative for this cannot come from the Congress Party. I am, therefore, convinced that only a constitutional amendment can fill the gap left by the failure of the political parties in India and, above all, the Congress Party to lay down healthy conventions in this regard.

After all, addition of every new minister means extra expenditure in terms of ministerial emoluments, allowances and amenities, and restriction the size of the ministries is bound to be welcomed by the tax payers of this country.

In the Defection Committee the Home Minister accepted the principle of restricting the size of the Council of Ministers, but the percentage suggested by him (10 per cent in cases where there are unicameral legislature and 11 per cent of the strength of the lower house where there are bi-cameral legislatures) does not achieve the purpose which I had in view in moving a bill on the subject in Parliament. During the discussions on this bill in the Lok Sabha, while there was virtual unanimity of favour of the principle of my bill, many members, including quite a few Congress members, felt that the proportion suggested by me, namely 1/12th of the total elected strength of the lower house was on the high side and that I should reduce it to 1/15th of the total elected strength of the State Assemblies and Lok Sabha. *This being the general tenor of the criticism in Lok Sabha I am unable to accept the Home Minister's suggestion of 11 per cent.*

In fact at the 8th August and 28th September meetings of the Defection Committee the majority view was for putting a ceiling on the size of the Union Ministry at 50.

On the basis of the proportion suggested in my bill, the strength of the Union Council of Ministers would have been 45, which, incidentally, is a figure which the Administrative Reforms Committee has endorsed, although on an *ad hoc* basis. It is my feeling that the Home Minister's refusal to accept the compromise proposal of Mr. J. P. Narayan stemmed from the fact that this would have meant reducing the strength of the Union Council of Ministers by at least 7 (including the vacancies of the last few months).

Does the Home Minister imply that the existing size of the Union Council of Ministers is a model and States should simply fall in line with the Centre? The strength which the Home Minister has favoured would, however, involve reduction of the Council of Ministers in at least 4 States, 3 Congress and 1 non-Congress, i.e., Rajasthan, Assam and Madhya Pradesh and Gujarat. When we ask these State Governments to make sacrifices, is it not but proper that the Union Government should itself set a good example? I therefore stick to my view that the size of the Council of Ministers for bigger States and for the Union should not exceed 1/12th of the total elected strength of the lower house. If, however, the Home Minister accepts Mr. J. P. Narayan's half-way house of a ceiling of 50, I shall also agree to this compromise.

I had said that the Committee's proposal that defectors should be prohibited by law from becoming Ministers for at least a period of one year will be acceptable to me provided (a) other inducements and allurements are also prohibited; and (b) parties which encourage defections and admit defectors as members into their own legislature parties should also be made to suffer certain disabilities. As to my condition (a), the acceptance by the Committee of Mr. J. P. Narayan's formulation in regard to additional emoluments etc. substantially meets my first objection. However, I feel that unless parties which encourage defections are penalised, this evil cannot be checked. I have, therefore, proposed a very simple disqualification for parties on the basis of the definition of defection proposed by Mr. J. P. Narayan, namely:—

“An elected member of a legislature who had been allotted the reserved symbol of any political party can be deemed to have defected, if after being elected as a member of either house of parliament or of the Legislative Assembly or Legislative Council of a State or representative body in a Union Territory, he voluntarily renounces allegiance to, or association with, such political party, provided his action is not in consequence of decision of the party concerned.”

My suggestion is that the following principle should be accepted by the Committee and enforced by a suitable amendment of the People's Representation Act or of the rules framed thereunder:—

“If any recognised political party admits a defector as defined above whether as a member or as an associate member into its legislature party, the recognition, including the reserved symbol, of that party shall be withdrawn for a period of two years.”

Unless some such penalty is prescribed, the evil of defections cannot be brought under control.

While I agree that the right of dissolution will act as a deterrent, there are other factors which must be taken into account before a decision is taken on this subject. The question is who should be given this right of dissolution? Can a minority Chief Minister be allowed to enjoy this right or should only the Chief Minister, who has survived a non-confidence vote or any other crucial vote in the session of the legislature, be allowed to exercise this right between the adjournment/prorogation of one session and summoning of another?

If it be claimed that only the Chief Minister/Prime Minister, who has won a confidence vote, be given the right of dissolution such a Chief Minister/Prime Minister probably will not want to exercise this right at all, since he is in possession of stable majority support. There is also the further complicating fact that elections in India cannot be held quickly without preparation, and that for a poor country like ours frequent elections are likely to prove an expensive democratic luxury. On a balance of considerations, therefore, I do not find myself in a position to support this unqualified “right” of a Chief Minister/Prime Minister to dissolve the legislature.

I would, however, like the two Houses of Parliament to adopt a Resolution incorporating certain directions for the Governors and President of the Republic in regard to the picking up of Chief Minister/Prime Minister-designate, exploring the possibility of an alternative Government after the fall of a government in power, prorogation and dissolution of legislatures, dismissal of Ministries, etc. Such a resolution will have the double advantage of definiteness as well as flexibility inasmuch as changes and adjustments can be made in this regard without going through the elaborate procedure of constitutional amendment or legal enactment.

(7) Shri P. Ramamurti

The Committee on Defections, laboured long, but it must be admitted it has brought out a report which amounts to precious little.

The Committee has defined the term "Defections".

Having done so, the main recommendations of the Committee are:

- (1) The convening of a conference of representatives of all recognised political parties and striving for the adoption of a code of conduct.
- 2) The Prime Minister and Chief Minister should be an elected member of the lower house in future.
- 3) Prohibition of the appointment of a defecting legislator as a minister or to other such offices for a period of one year, unless the member gets himself re-elected earlier.

The first recommendation is just a pious wish and I do not think that anything effective will result therefrom.

The second recommendation has no direct bearing on the question of defections.

The third one will not prove effective in preventing defections.

Dealing with the question of a code of conduct, to be agreed upon by the political parties, the Committee itself has stated that "it is clear however, that such a code will have to provide against a legislator, whether unattached or belonging to a political party, being taken into the fold of another political party unless he resigned from the legislature and agreed to contest a fresh election on the ticket of the latter political party".

The simplest and most straight forward course is to legislate that a defector would automatically cease to be a legislator until he contested afresh on the ticket of the new party to which he has defected and won the election.

Yet this simple proposal is rejected on the specious ground of the need for "forging of ideological polarisation or clarity" and preventing the organic growth of political parties which is an essential part of the democratic process.

A legislator in India sponsored by a political party has got elected on the pledge to abide by the programme of that party. Hence, if he defects from that party and still continues to be a legislator, he is guilty of breach of faith with the electorate. He cannot any longer claim to represent that electorate, unless he gets a fresh mandate from the electorate on the basis of the programme of the new party in which he has joined.

Therefore, to allow such defectors to continue to be legislators without their getting re-elected, would be mockery of democratic institutions.

This position is, in fact, accepted by the Committee when it says:

“Election is primarily a contest among parties to have their candidates returned from as many constituencies as possible. For this purpose parties put up candidates who are bound to them by the very fact of sponsorship and by their allegiance to their programme. This tie and this allegiance is what confers predictability on the functioning of representative bodies.... A representative, then should be deemed to be bound to the party under whose aegis he wins an election”.

After recognising this position in regard to the representative character of the legislators, not to agree to legislative action to prevent defections, which is the only effective method, only betrays a desire to continue the present situation

When the Committee did not agree to such legislation, I proposed that no defector should be a minister unless he got himself re-elected. Even this was not agreed to. The Committee further watered down this proposal by recommending that a defector should be barred from ministership or similar posts, for a period of one year only. How after expiry of one year, the defector who has betrayed the trust placed in him by the electorate, washes away his sin and regains the trust passes my comprehension.

The third most important proposal, which has a vital bearing on the question of the functioning of democratic processes and defections was the one that said that the Chief Minister of a State, if he lost the majority in the legislature, as a result of defections, should have the right to call for the dissolution of the legislature and seek the mandate of the people. This also was not accepted.

This proposal is based on the fact that the will of the electorate, in whom the sovereignty is supposed to rest, must prevail. If at the last elections, a particular party or group of parties standing against the ruling party, gets the majority, then it obviously means that the electorate has given its verdict as to whom it wants to form the Government of the State for the next five years.

But if, after election a number of people defect and reduce the majority to a minority, then it obviously means that these people are subverting the will of the people as expressed in the last general

election. To prevent this subversion, the Chief Minister or the Council of Ministers, should have the right to have the Legislature dissolved.

It is obvious that if the Chief Minister feels that the defections correctly reflect a change in the attitude of the electorate, then naturally he will not call for such dissolution.

It is not as though these provisions cannot be enacted. The questions were referred to the committee of jurists, who recommended legislation. If the Committee were to reject these proposals there was no need to have their legislative feasibility examined by legal experts.

The result is that the labours of the Committee have been fruitless.

The fact is that the ruling Congress party is the most guilty party. From 1952, when it lost the majority, in certain States like Madras, Pepsu, Travancore-Cochin, it has been consistently wooing members from other parties to subvert the will of the electorate. These are the standards of public morality it has been exhibiting ever since it attained power.

Similarly, after the last general election, when it lost the majority in a number of States it is well known how it has been doing its best to encourage defections and to use the institution of Governors for its own ends.

That party does not want to give up this game. Hence it is opposed to any effective measures, which will prevent the thwarting of the will of the electorate.

(8) Shri P. Venkatasubbaiah

In pursuance of the resolution moved by me on the problem of defections, a high level Committee was constituted under the chairmanship of the Home Minister and consisting of representatives of all political parties; constitutional experts, etc. I am glad that my resolution had the unique distinction of being passed unanimously by the Lok Sabha. That shows the all-round anxiety expressed by the Members of all political parties about the growing menace of legislators changing sides often resulting in great instability in the administration of various States. In addition to this, defections have often led to political corruption of legislators which is detrimental to the healthy growth of parliamentary democracy. After the Fourth General Election, this problem of defections assumed

unhealthy proportions which not only affected the Congress Party but also the other political parties who were hoping to give to the Indian people a clean and stable government. This Committee under your Chairmanship held a number of sittings and the last sitting was on the 28th September where certain opinions crystallised and decisions taken. The lawyer sub-committee constituted by the Chairman gave some constructive suggestions and these were also discussed at some length by the Committee. The constitutional experts who have gone deep into this matter had suggested some drastic remedies including amending the Constitution and also imposing certain penalties upon legislators who indulge in defections horse-trading. I was all the while hoping that under this broad framework of the lawyers' recommendations and also the opinions expressed by the leaders of different political parties, a clear and definite picture will emerge by which we can set up healthy conventions and precedents for the proper functioning of parliamentary democracy. Though the discussions were conducted in a very cordial atmosphere, I must say, in all humility, that some of the representatives of the political parties, who participated in the discussions, gave more weight to project their own party angles rather than give an objective and dispassionate view of the entire problem of defectors. At certain stages the discussions almost came down to the level of isolating the Congress Party and putting it in juxtaposition with the other political parties. To quote an example, in the case of limiting the size of the Ministries, when there was more or less a consensus of settling the matter on the basis of percentage of total strength of the Assembly/Lok Sabha as the case may be, a numerical ceiling on the size of the Ministries was sought to be placed. On this I differed and I feel that in the present circumstances and also for the healthy working of parliamentary democracy, percentage is the only remedy for the reason that this is only the maximum. Any Prime Minister or Chief Minister is at liberty to have as much a small cabinet as he or she might deem fit. By fixing the percentage of 11 per cent or 10 per cent based on the strength of the lower house, the intention of many of the members of the Committee is that in the present political context, where not only multi-party governments are formed but also permutations and combinations at party levels are taking place, this much of leeway to the leader of the majority party is necessary for ensuring a stable government. So the fixation of numerical strength of 50 will have no meaning in this context.

As regards the recommendation No. 2 wherein it has been stated that no person, who was not a member of the lower house should be appointed a Prime Minister or Chief Minister, I have dissented and stated that it should be open to the legislature party to elect any person even outside the legislature or parliament provided he or she

gets elected within a period of six months. I laid particular emphasis on this point because in the present complexity of parties and also the mutual rivalries and jealousies that are rampant in all political parties, the party may not be deprived of the services of a person who is competent to be the Prime Minister or Chief Minister by adopting all sorts of methods to get him or her defeated at the polls. A non-member, when once he gets the confidence of the majority party, is competent enough to form the Government and there is also a proviso attached that he should seek the verdict of the electorate within six months. I feel that this suggestion of mine will go a long way in creating a healthy atmosphere for deciding the right person.

On the other matters on which the Committee has more or less arrived at unanimous conclusions, I have nothing much to add but hope that all the political parties will give an honest and fair trial in implementing these decisions though they are limited in their scope of preventing defections.

I also feel that all the political parties should give their serious thought to the problem of the plethora of independents getting elected. Their number is increasing from one general election to the other. To my mind, I feel that a drastic remedy has to be found out to this problem as in a number of cases, it is these elements that cause instability in politics.

APPENDIX I

COMPOSITION OF THE COMMITTEE ON DEFECTIONS

1. Union Home Minister Chairman
2. Union Law Minister Membe
3. Union Minister of Parliamentary Affairs
& Communications Member
4. Shri P. Venkatasubbiah, M.P. . . . Member (Mover of the Resolution passed
in the Lok Sabha)
5. Prof. N. G. Ranga, M.P. . . . Member representing the Swatantra Party
6. Shri Bhupesh Gupta, M.P. . . . Member representing the Communist Party
of India
7. Shri P. Ramamurthy, M.P. . . . Member representing the Communist Party
Marxists
8. Shri Madhu Limaye, M.P. . . . Member representing the Samyukta Socialist
Party
9. Shri S. N. Dwivedi, M.P. . . . Member representing the Praja Socialist Party
10. Prof. Balraj Madhok, M.P. . . . Member representing the Bhartiya Jan Sangh
11. Shri K. Anbazhagan, M.P. . . . Member representing the Dravida Munnetra
of Kazhagam
12. Shri N. C. Chatterjee, M.P. . . . Member representing the Progressive Group
of Independents
13. Dr. Karni Singh, M.P. . . . Member representing the Independent
Parliamentary Group
14. Shri Raghuvir Singh Shastri, M.P. . . . Member representing the Nirdaliga
Sangathan Group
15. Shri C. K. Daphtary, Attorney General Member
16. Shri M. C. Setalvad, M.P. . . . Member
17. Dr. H. N. Kunzru Member
18. Shri Jaya Prakash Narayan Member
19. Shri Mohan Kumaramangalam Member

APPENDIX II

**COMPOSITION OF THE COMMITTEE ON DEFECTION AND THE
ATTENDANCE BY MEMBERS OF ITS MEETINGS.**

Name	First Meeting Mar. 26, 1968.	Second Meeting Apr. 18, 1968.	Third Meeting May 12, 1968.	Fourth Meeting Jul. 14, 1968.	Fifth Meeting Aug. 8, 1968.	Sixth Meeting Sep. 28, 1968.
Shri Y. B. Chavan, Union Home Minister.	Attended	Attended	Attended	Attended	Attended	Attended
*Shri P. Govinda Menon, Union Law Minister.	Did not attend	Attended	Did not attend	Attended	Did not attend	Attended
Shri Ram Subhag Singh, Union Minister of Parliamentary Affairs & Communications.	Attended	Attended	Did not attend	Attended	Did not attend	Attended
Shri P. Venkatasubbaiah	Attended	Attended	Did not attend	Attended	Did not attend	Attended
Prof. N. G. Ranga	Did not attend	Did not attend	Attended	Attended	Attended	Attended
Prof. Balraj Madhok	Did not attend	Attended	Attended	Attended	Attended	Attended
Shri Bhupesh Gupta	Attended	Attended	Attended	Attended	Attended	Attended
Shri P. Ramamurti	Did not attend	Attended	Attended	Attended	Did not attend	Attended
Shri S. N. Dwivedy	Attended	Did not attend	Did not attend	Did not attend	Attended	Did not attend
Shri Madhu Limaye	Attended	Did not attend	Did not attend	Did not attend	Attended	Attended
Shri K. Anbazhagan	Attended	Attended	Attended	Did not attend	Attended	Attended
Shri Jaya Prakash Narayan	Did not attend	Did not attend	Did not attend	Attended	Attended	Attended
Shri Raghuvir Singh Shastri	Did not attend	Attended	Attended	Attended	Attended	Attended
*Shri N.C. Chatterjee	Did not attend	Did not attend	Did not attend	Did not attend	Did not attend	Attended
Dr. Karni Singh	Attended	Did not attend	Did not attend	Did not attend	Did not attend	Did not attend

*These were also members of the informal Lawyers Group.

Name	First Meeting Mar. 26, 1968.	Second Meeting Apr. 18, 1968.	Third Meeting May 12, 1968.	Fourth Meeting Jul. 14, 1968.	Fifth Meeting Aug. 8, 1968.	Sixth Meeting Sep. 28, 1968.
Dr. H. N. Kunzru	Attended	Attended	Attended	Attended	Attended	Attended
*Shri M. C. Setalvad	Attended	Did not attend	Did not attend	Did not attend	Attended	Attended
*Shri C. K. Daphtary	Attended	Attended	Did not attend	Attended	Attended	Did not attend
*Shri S. Moan Kummaramangalam	Did not attend	Attended	Did not attend	Attended	Did not attend	Did not attend

APPENDIX III

COMMITTEE ON DEFECTIONS

Papers and notes circulated to the Members

1. Proceedings of the meeting of the Committee held on March 26, 1968.
2. Defections—A working paper prepared by the Ministry of Home Affairs.
3. The Nature and Character of Representation—by the Ministry of Home Affairs.
4. The Legal and Constitutional Aspects of the Problem of Defections—by the Ministry of Law.
5. A note on the subject by Professor Balraj Madhok.
6. Letter dated April 18, 1968 from Shri S. N. Dwivedy to Union Home Minister.
7. A note on the subject by Dr. Karni Singh.
8. Proceedings of the second meeting of the Committee on Defections held on April 18, 1968.
9. A discussion of some of the issues connected with Dissolution of Sessions of Parliament/State Legislature.
10. A note on some of the aspects of the suggestion for limiting the size of Council of Ministers.
11. Proceedings of the third meeting of the Committee on Defections held on May 12, 1968.
12. Report of the Lawyer-Members of the Committee on the various measures discussed in the Committee to curb defections.
13. Proceedings of the fourth meeting of the Committee on Defections held on July 14, 1968.
14. Proceedings of the fifth meeting of the Committee on Defections held on August 8, 1968.
15. Proceedings of the sixth meeting of the Committee on Defections held on September 28, 1968.

APPENDIX IV

REPORT OF THE LAWYER MEMBERS OF THE COMMITTEE ON DEFECTIONS ON THE VARIOUS MEASURES DISCUSSED IN THE COMMITTEE TO CURB DEFECTIONS

I. Introduction

1. In his letter No. 1351-HM(G)/68 dated 18/20th May, 1968 addressed to the members of this Group, the Union Home Minister had suggested that it might be useful if we could examine the various remedial measures proposed by the members of the Committee on Defections at the three meetings of the Committee held so far, and advise the Committee on their legal and constitutional aspects. He also wrote in similar terms to the Union Law Minister, suggesting at the same time that it might be convenient if he convened the sittings of the Group. The letter of the Union Home Minister to the members of the Group, and his letter to the Union Law Minister can be seen in Annexures I and II respectively.

2. Accordingly, the Union Law Minister convened the meeting of the Group to be held on Thursday, July 4 and Friday, July 5, 1968 at Ootacamund. Altogether we met in three sessions;* the first two on July 4 were attended by Sarvashri M. C. Setalvad, C. K. Daphtary and S. Mohan Kumaramangalam; at the third session in the forenoon of July 5, the Union Law Minister (who could not come the previous day because of a Cabinet meeting at New Delhi) joined the discussion. Shri N. C. Chatterjee to whom also the Union Home Minister's letter was addressed could not attend the meeting as he was not keeping well. Shri G. A. Shah, Joint Secretary, Ministry of Law and Shri B. S. Raghavan, Director, Policy Planning and Review, Ministry of Home Affairs, were in attendance in all the three sessions. The paragraphs that follow constitute our report to the full Committee.

II. Need of Political Morality and Observance of a Code of Ethics by Political Parties

3. Before formulating our advice on the various measures that have been under discussion in the Committee on Defections, we consider it necessary to make a few general observations. While

*First and Second sessions : 9-30 A. M. to 12-30 P. M. and
3-30 P. M. to 5-30 P. M. on July 4.
Third session : 9-30 A. M. to 11-30 A. M. on July 5.

the search for legal and constitutional curbs on political defections has undoubtedly its value, the more lasting solution to the problem can only come from the adherence by political parties to a basic political morality and the observance by them of certain proprieties and decencies of public life. In other words, action at the legal and constitutional levels can be no substitute for action at the political level. The fact that we, or the Committee on Defections, make certain recommendations on the possible legal and constitutional remedies, should not be taken to mean that the political parties should abdicate their functions and obligations mutually to one another, and ultimately towards the public or that they should take cover behind any legal fences that may be erected. Without respect on their part for the fundamental decencies of political life, legal and constitutional devices will fall woefully short of providing full insurance; whereas, with it, they may be largely dispensed with. We, therefore, wish at the very outset to lay emphasis on the need for political parties to draw up a Code of Ethics, and by observing it in letter and spirit, render recourse to legal provisions unnecessary.

III. Possible Legal and Constitutional Remedies

4. The possible legal and constitutional remedies examined by us and our advice in regard to them are set out below :—

(i) *Rendering a defector liable to incurring a disqualification*

Articles 102 (1) (e) and 191 (1) (e) of the Constitution empower Parliament to make a law providing for disqualifying a person for being chosen as, and for being, a member of either House of Parliament or of the State Legislative Assembly or Legislative Council. As standing for election to Parliament or State Legislatures is only a statutory, as distinguished from a fundamental, right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable in public interest. On this basis, it is possible to provide in a special legislation that a legislator who renounces the membership of or repudiates his allegiance to a political party shall be disqualified from continuing as a member of Parliament/State Legislature. He will nevertheless, be free to stand for election again if he so wishes, and to sit as a member in case he gets elected. Where, however, a legislator defects for a pecuniary advantage or for an office of profit, an element of aggravation enters into his action which, we feel, has to be visited with greater severity. This may be done by providing that in addition to being disqualified from continuing as a member of Parliament/State Legislature, he will

also be disqualified from being chosen as a member of Parliament/State Legislature for a particular period. In this context, we consider the term "office of profit" as used in article 102/191 to be inclusive of ministership [as is evident from the explanation contained in clause (2) of that article]; hence, defection for the sake of ministership can, without difficulty, be brought under the aggravated category.

5. The advantage in this procedure is that articles 103 and 192 of the Constitution enable the President/Governor to decide and dispose of each case of defection finally, subject only to the condition that he shall obtain the opinion of the Election Commission and act in accordance with it. In doing so, it is only to be expected that the President/Governor will go into the full facts and circumstances of each case, including any explanation of his conduct that the legislator has to offer.

6. The most essential pre-requisite for any such provision is an acceptable definition of what constitutes an act of defection. The first question that confronted us was with regard to Independents. We are aware that in numerical strength they form the largest single element after Congress, that they constitute an anomaly in politics and that not an inconsiderable part of the political instability can be directly or indirectly traced to them. Even so, on a careful consideration of all factors, we feel that to include Independents in any formulation that we may attempt would, in practice, create more difficulties than it would solve.

7. We then considered whether the definition of defection could be narrow down, as was urged by some members of the Committee, to the movement of a legislator from the Opposition to the government or vice versa. Such a restricted approach will encounter three major hurdles; it may prove impracticable; it may be discriminatory and hence violative of the Constitution; and it cannot be justified on any reasonable criteria or principle. Hence the definition had, in our view, necessarily to be widened to include any person (and not merely a Legislator belonging to the Opposition or the Government benches) who may be elected to Parliament/State Legislature on the symbol of a political party recognised by the Election Commission under rule 5 of the Conduct of Election Rules, 1961, framed for the purpose of allotment of reserved symbols. Under this rule, the candidate has to make a declaration in his nomination paper to the effect that he is sponsored by a particular political party. Also, the president, secretary or other authorised office bearer of the party is required to send a notice in writing to the Returning Officer that the candidate is sponsored by that party.

Thus, some proximate and perceivable relationship has been established by virtue of that rule between a recognised party and the candidate sponsored by it.

8. In this connection, we also explored the possibility of including within the scope of our definition transfer of allegiance or repudiation of membership by a legislator of an identifiable group—like the BKD or the Bangla Congress—which may be loosely known as a party, but which may not be a “recognised party” within the meaning of rule 5 mentioned above. We found that this was fraught with many difficulties and had to be excluded from consideration. In our view, this does not detract from our definition which takes care of the major evil, namely defections from organised parties. Further, the nature of the problem itself is admittedly such that any exercise seeking to plug every conceivable loophole at one stroke might prove to be counter-productive.

9. Having regard to all these considerations, and subject to any further drafting refinements, the legal provisions may be on the lines of the draft given in Annexure III (A) and (B).

10. We gave considerable thought to the question whether defection as defined by us, besides being made a disqualification, should, in its ordinary and/or aggravated form, also be made a penal offence. We felt that in the light of judicial interpretation of the right to freedom of association guaranteed in Article 19 (1) (c) (which has been held to include the right not to associate as also to dissociate), such a provision would involve a fundamental right. A restriction on that right can only be in the interests of sovereignty and integrity of the country, or public order or morality; it would be hard to justify on any of these grounds any restriction for the purpose of making defection a penal offence. Any legislation imposing restriction on the right to freedom of association on any ground other than sovereignty and integrity of the country, public order or morality would require an amendment of article 19, but so long as the Supreme Court’s decision in *Golak Nath’s* case stands, no amendment to any article in the chapter on Fundamental Rights will be possible. Hence we did not pursue the feasibility of this line of action further.

(ii) Limiting the size of the Council of Ministers

11. As articles 75 and 164 are at present worded, there is no limit on the number of Ministers that the Prime Minister/Chief Minister may advise the President/Governor to appoint to the Council of Ministers. In view of the significant part played by the lure of ministerships in political defections, there was a strong consensus

in the Committee on Defections that limiting the size of the Council of Ministers might not only act as a damper on potential defectors, but might offer the PM/CM himself a convenient escape-latch when faced with pressures which he might be otherwise unable to withstand. We find the argument convincing. However, the question before us was whether the result should be achieved by ordinary legislation modelled on the UK House of Commons Disqualifications Act, or by a constitutional amendment laying down that the number of Ministers in the Council of Ministers should not exceed a prescribed percentage of the membership of the Lower House, with an additional percentage of the membership of the Upper House where there was one

12. In terms of the Act in the United Kingdom, Ministers appointed in excess of the maximum permitted number are automatically rendered ineligible to sit and vote in the House, until they enter the permissible zone by any death, resignation, or other casualty that may occur among those already within it. We cannot make any such provision here because our Constitution entitles a Minister to sit and vote in the House to which he may be elected.

13. A variant of the idea considered by us was to amend the law relating to the salaries and allowances of Ministers, whereby those appointed in excess of a number prescribed in the amendment became ineligible to draw salaries and allowances. We are doubtful about the impact of any such amendment on would be defectors most of whom, we believe, would be quite content with the power, perquisites and patronage that ministership would bring, and may not allow their ineligibility to draw any salary or allowance to discourage them unduly.

14. Much the best course in our opinion is to go in for a constitutional amendment to the relevant articles with a view to limiting the size of the Council of Ministers. We would only add that within the definition of Council of Ministers, positions designated as Ministers of State, Deputy Ministers and Parliamentary Secretaries should also be included. One convenient method here would be not to provide for these details in the Constitution but to take the enabling power for Parliament by an amendment of articles 75 and 164 for making a law, or (what would be a much better course) a Presidential Order, limiting the size of the Council of Ministers. It would however be advisable to prescribe the percentage in the Constitution itself. It could be 10 per cent of the strength of the Lower House, with an additional 2½ per cent of the strength of the Upper House where there is one, or ten, whichever is greater. A possible draft of the proposed amendment is given in annexure IV (A) and (B).

(iii) Right of dissolution being accorded to the Council of Ministers:

15. The power of dissolution has been viewed by some political theorists as a potent weapon in the hands of a PM/CM, and as a means of enforcing party discipline and ensuring political stability. It was pointed out to us that on a strict interpretation of the provisions of articles 74 and 163 of the Constitution, the President/Governor would have to grant a dissolution once the PM/CM acting for the Council of Ministers gave him advice to that effect; that the President/Governor was not in that event entitled to look behind the advice as to whether a Council of Ministers did or did not command a majority in the House; and that at any rate, when it was incontrovertible that the President/Governor could not summon or prorogue the House under articles 85 and 174 except on the advice of PM/CM, there could equally be no scope for the exercise of the discretion of the President/Governor when the advice for dissolution—under those very articles—was tendered.

16. We note, however, that during the discussions in the main Committee itself there were reservations and difference of opinion among members on the constitutional, political and practical aspects of this suggestion. The brief circulated to us also contains differing views on this point. One view that was expressed in the meeting of this Group was that the practice in other democracies based on Western parliamentary model had varied from time to time and from situation to situation. When it was so in countries which may lay a claim to certain well-established political traditions and working of the party system, to insist on a fixity of interpretation or action in this area in a country like ours which was still to find its political moorings would be to rob the growth of constitutional processes of dynamism and vitality.

17. The contrary view point, namely, that the Chief Minister should have the right to advise dissolution and the Governor would be bound by such advice, has been put forward more on account of general political considerations; particularly that of safeguarding State autonomy and preventing undue interference by the Centre, operating through the Governor, with the political developments in a State.

18. On balance, it appears to us that such deterrance as the suggested right will have on political defections, and such facility as it may confer on a PM/CM in keeping his party members in line, may at best be peripheral. It might also be dearly bought at the price of exposing a whole State to the turmoil of a costly election. In view of the more direct and drastic measures recommended by us earlier, we do not consider that this proposal is essential for combating defections or that it really falls within the purview of the

work of this Committee on Defections. In this view of the matter, we do not feel that we should venture on any hard-and-fast interpretation of the relevant provisions of the Constitution in regard to the right and discretion of the President/Governor or should offer any firm recommendation as to what it should be.

To sum up:

- (a) We do not consider the proposal central to the issue of defections; and
- (b) The measures already recommended by us are, in our view, adequate, whether taken singly or in combination.

20. If the Committee on Defections, however, decides that from the point of view of discouraging defections, it would be advisable to lay down that the advice of a PM/CM on dissolution is binding on the President/Governor; no constitutional amendment or fresh legislation is necessary to give effect to such a decision. It would suffice to record agreement that there should be a convention that the power of dissolution under Articles 85(2)(6) and 174(2)(b) must be interpreted as compelling the President/Governor to act on the advice of the Council of Ministers headed by the PM/CM respectively.

(iv) Registration of political parties

21. We have taken note of the argument that is sometimes advanced that a large number of mushroom parties become a breeding ground for defections, and that one of the ways to control their proliferation is through registration of political parties with a view to ensuring that they satisfy certain criteria of numerical strength, geographical spread etc. We are again constrained to say that however beneficial reduction in the number of political parties may be to the health of the body politic, its relevance to the problem of defections is marginal, and as such, as we do not feel called upon to discuss the merits of the proposal.

(v) Recall

22. We do not consider this necessary or feasible; in any case the legislation in respect of disqualification of a defector recommended by us earlier would, in effect, achieve the same purpose in a quicker and less cumbersome manner.

P. GOVINDA MENON.
M. C. SETALVAD.
C. K. DAPHTARY.
S. MOHAN KUMARAMANGALAM.

OPTACAMUND;

The 5th July, 1968.

ANNEXURE I

Copy of D.O. letter No. 1351-HM(G)/68, dated 18/20th May, 1968 from Shri Y. B. Chavan, Union Home Minister, to the members of the Group (Sarvashri M. C. Setalvad, N. C. Chatterji, S. Mohan Kumaramangalam and C. K. Daphtary).

You would have by now received the proceedings of the third meeting of the Committee on Defections held on May 12, 1968. At this meeting, all the members present were particular that the committee should come to agreed conclusions at the next meeting to be convened some time in the first week of July. I also feel that there has been a thorough discussion of the various aspects of the problem and the possible remedial measures, and it is time the committee drew up its report for being placed before Parliament at its next session.

It occurs to me that it would conduce greatly to a clear grasp of the issues involved if the constitutional experts on the committee informally confer amongst themselves in the first instance, consider the constitutional and legal remedies suggested and make available to the main committee their comments and recommendations on the feasibility of the courses of action proposed and the lines on which effect could be given to them. It would perhaps be helpful to associate the Minister of Law with these informal sittings; it might indeed be convenient to all concerned if he convenes the meetings. I am writing to him accordingly, in the hope that this idea would prove acceptable.

ANNEXURE II

*Copy of D.O. letter No. 1351-HM (G)/68, dated 18/20th May, 1968
from Shri Y. B. Chavan, Union Home Minister to Shri P. Govinda
Menon, Minister of Law*

I enclose a copy of the letter I have addressed to Sarvashri M. C. Setalvad, C. K. Daphtary, Mohan Kumaramangalam and N. C. Chatterji in connection with the work of the Committee on Defections. The letter is self-explanatory. I hope it will be possible for you to undertake this extra trouble in the interests of successful—and early—completion of the Committee's work.

ANNEXURE III(A)

Amendments to the Representation of the People Act, 1951 or by a Special Legislation

If any person who has been elected as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State and who was allotted the reserved symbol of any political party in respect of such election renounces (whether by words, conduct or in any other manner) after the said election allegiance to, or association with, such political party, he shall, upon such renunciation, be disqualified for being a member of the House of Parliament, Legislative Assembly or Legislative Council to which he was so elected.

ANNEXURE III(B)

Amendments to the Representation of the People Act, 1951 or by a Special Legislation

If any person who has been elected as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State and who was allotted the reserved symbol of any political party in respect of such election renounces (whether by words, conduct or in any other manner) after the said election allegiance to, or association with, such political party, by accepting or obtaining or agreeing to accept from any person for himself any gratification (other than legal remuneration) or any office of profit including office of Minister, Minister of State or Deputy Minister or Parliamentary Secretary as a motive or reward for such renunciation, he shall be disqualified for a period of six years.

ANNEXURE IV (A)

Amendment to the Constitution

In article 74, after clause (2), the following clause shall be inserted, namely:—

- “(3) The total number of Members of a Council of Ministers (including Ministers of State and Deputy Ministers) and Parliamentary Secretaries, if any, shall not be more than the aggregate of one-tenth of the total membership of the House of the People and one-fortieth of the total membership of the Council of States”.

ANNEXURE IV(B)

Amendments to the Constitution

In article 163, after clause (3), the following clause shall be inserted namely:—

- “(4) The total number of Members of a Council of Ministers (including Ministers of State and Deputy Ministers) and Parliamentary Secretaries, if any, shall not be more than—
- (a) one-tenth of the total membership of the Legislative Assembly, where the Legislature of the State consists of only one House;
 - (b) the aggregate of one-tenth of the total membership of the Legislative Assembly and one-fortieth of the total membership of the Legislative Council, where the Legislature of the State consists of two Houses”.