

(1988) 03 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No's. 11725/87 etc.

Jayashankara Gowda

APPELLANT

Vs

Chief Secretary

RESPONDENT

Date of Decision : 14-03-1988

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (c), 226, 227

Karnataka Local Authorities (Prohibition of Defection) Act, 1987 — Section 3 (1) (b), 8

Citation : (1988) ILR (Kar) 1005

Hon'ble Judges : Bopanna, J

Bench : Single Bench

Judgement

Bopanna, J.—In this batch of Writ Petitions the constitutional validity of the Karnataka Local Authorities (Prohibition of Defection) Act, 1987 (hereinafter referred to as the Act) is challenged by the petitioners on various grounds. Principally their challenge is premised on the ground of violation of Articles 14, 19(1)(a) and 19(1)(c) of the Constitution of India, Additionally they have submitted that the Act offends the basic structure of the Constitution and therefore should be declared as void. Briefly stated, their arguments are that in the absence of any party system in the Constitution, the Act is violative of the constitutional rights guaranteed under the Constitution of India; that the defection of an individual is sought to be penalised whereas the defection of a group of individuals is legalised and thereby there has been discrimination which violates their rights, protected under Article 14 of the Constitution; that Sections 3 and 4 of the Act should be read as a whole and thus construed the provisions of the Act take away the right of adult franchise which is the basic structure of the Constitution and the only remedy to redress the evils of defection is the right of recall and not the right to disqualify the members for their acts of defection; that the power of judicial review is also taken away as is clear from Section 4 read with Section 8 of the defection Act; that the right to free and fair elections is one aspect of the fundamental right to the freedom of speech protected under Article 19(1)(a) of the Constitution of India; that in the absence of proper

definition of the word "defection" in the Act, the provisions of Sections 3 and 4 impair the fundamental rights guaranteed under Articles 19(1)(a) and 19(1)(c) of the Constitution of India. It is also contended that there is no Legislative competence to pass the Act; that the provisions of Section 4(2) of the Act should be read with the provisions of Section 138 of the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (hereinafter referred to as the Zilla Parishad Act") and Section 6 of the said Act with Entry 5 in List II of Schedule 7 and Entry 13 in the same list; that there is discrimination between a political party and an independent party and such discrimination is bad in law; that there is a distinction between defection and dissent in that the right of dissent in a political party should be protected since the right of dissent is one aspect of the right to the freedom of speech; therefore, even though Section 3(1)(b) of the Act could be treated as valid, since it relates to voluntary resignation from the membership of the party, the validity of Section 3(1)(b) of the Act cannot be sustained since Section 3(1)(b) of the Act relates to voting and restraining from voting in any meeting of the Zilla Parishad or Mandal Panchayat contrary to the direction issued by a political party to which a person belongs and such restriction affects the right to dissent which is guaranteed under the Constitution and that right cannot be whittled down by the provisions of Section 3(1)(b) of the Act; Section 3(1)(b) of the Act, in a sense amounts to political serfdom and though the right to vote is a statutory right guaranteed under the Zilla Parishad Act, the exercise of that right is a fundamental right since the right to free and fair elections is one aspect of the basic structure of the Constitution and therefore, unless defection is made for personal gain, defection which was induced or motivated by a right to dissent cannot be prohibited under the provisions of Section 3(1)(b) of the Act; that the word "election" means voting by ballot, that is, secret ballot and that "Vote" means a voluntary expression of the will of the individual who votes and that formal expression of the will is protected by the provisions of Article 19(1)(a) of the Constitution; that the consequences of exercising the right to dissent which is called defection under the Act are also very drastic and are opposed to the provisions of the Representation of People Act in that under the Anti-defection Act a person is disqualified for life if he commits any act in violation of Section 3(1)(b) of the Act and such disqualification is unreasonable, arbitrary and is opposed to Articles 14 and 19(1)(a) and (c) of the Constitution; that when the petitioners have pleaded the necessary facts to bring their case under Article 14 of the Constitution, the burden is shifted on to the State to prove that there is no discrimination attracting the vice protected under Article 14 of the Constitution and the State having not discharged the burden, this Court should take the view that the provisions of Section 3(1)(b) of the Act are hit by the provisions of Article 14 of the Constitution; likewise, the provisions of Article 19 of the Constitution are also attracted, the State having not discharged its burden to prove the contrary; that the rights of the petitioners are also as much part of the fundamental rights as constitutional rights and that the restrictions imposed u/s 3(1)(b) of the Act should be tested by the positive rights guaranteed under

Article 19(1) of the Constitution and the negative rights also must be judged by the same standard as this Court judges the positive rights conferred by the Constitution; that different authorities have been appointed under the Act for the adjudication of defections and that is also one more ground attracting the vice protected under Article 14 of the Constitution and the power of judicial review is also taken away which offends the basic structure of the Constitution; that in the absence of inner party democracy in the present political set up which this Court could take judicial notice of, there could not be any party whip which could be binding on the alleged defector and therefore, Section 3(1)(b) of the Act must be declared as bad in law; that there is no accountability of any political party to any independent authority in the light of the observations of the Full Bench of Jammu & Kashmir High Court in *MIAN BASHIR AHMAD v. STATE OF J & K AND OTHERS* AIR 1982 J&k 26; that two learned Judges of the Jammu & Kashmir High Court had invalidated the provisions of the Jammu & Kashmir Anti-defection Act and this Court should take the same view and declare that the impugned Act as bad in law. The petitioners have drawn much support from the provisions of the Constitution as also the provisions of the Representation of People Act in support of their contentions.

2. Learned Government Pleader appearing for the State Government has sustained the validity of the Anti-defection Act on the following grounds: That the Act does not affect the basic structure of the Constitution on the ground that the jurisdiction of the High Court under Article 226 of the Constitution is taken away. He has submitted that Section 8 of the Act does not take away the jurisdiction of the High Court under Article 226 of the Constitution in the light of the ruling of the Supreme Court in *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, . Secondly, the decision of the Full Bench of the Jammu & Kashmir High Court on which the petitioners have relied is wholly inapplicable to the facts of these petitions as the provisions of Section 24(G) of the Jammu & Kashmir Act are not in pari materia with the provisions of Section 3 of the impugned Act; that there is no provision for condonation of defection under the Jammu & Kashmir Act and there is also no provision for disqualifying the members belonging to an independent party in the said Act; that the analogy of the right of a Member of Legislative Assembly to exercise his constitutional right is wholly inapplicable to the right of a Zilla Parishad or a Mandal Panchayat member to vote under the Zilla Parishad Act; that the Members of Legislative Assembly have certain constitutional rights by virtue of the provisions of the Constitution whereas the Zilla Parishad or Mandal Panchayat members only have certain statutory rights conferred by the Zilla Parishads Act; that the election of these members to Zilla Parishad and Mandal Panchayat, as the case may be, is controlled by the Karnataka Zilla Parishads, Taluka Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats (Conduct of Election) Rules, 1985, framed under the Zilla Parishads Act; that the provisions of Article 19(1)(a) and 19(1)(c) are not applicable to the facts of these petitions since the members of the Zilla Parishad and Mandal Panchayat have only a statutory right to vote under the

Zilla Parishads Act and not a constitutional right and that statutory right could be made subject to reasonable restrictions and those restrictions are found in Section 4 of the Act. The learned Government Pleader relying on the decision of the Patna High Court in *The State of Haryana Vs. The Haryana Cooperative Transport Ltd. and Others*, submitted that the disqualification prescribed under the Act also extends to local bodies and the machinery prescribed for deciding whether a person has been disqualified himself is adequate for the purpose of adjudicating such disqualification; that the Act prescribes a summary enquiry and that is sufficient for the adjudication of disqualification since the proceedings of election would disclose who had voted for whom and that would provide enough material to come to the conclusion whether a person has incurred the disqualification u/s 3 of the Act. He has also relied on the following decisions of this Court and the Supreme Court in support of his contentions:

1. *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*,
2. *Sakhawat Ali Vs. The State of Orissa*,
3. *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*,
4. *Ebrahim Suleiman Sait Vs. M.C. Mohammed and Another*,
5. *Railway Board Representing The Union of India (UOI) Vs. Niranjana Singh*,
6. *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*,

Mr. Veerabhadrappe appearing for some of the contesting respondents has submitted that all that the Act prohibits is voting and not participation in the elections. He submitted that proviso to Section 3 of the Act contains reasonable restrictions to the exercise of the right to participate in the elections and there is no absolute bar to vote or to refrain from voting subject to the restrictions contained in the provisions of Section 3 of the Act; that the 10th Schedule incorporated in the Constitution by the 52nd Amendment to the Constitution imposes certain disqualifications on defectors and the same disqualifications are incorporated under the provisions of the Act; that the disqualifications prescribed under the Constitution are found under Article 102(2) and Article 191 of the Constitution and these disqualifications are essential for a proper working of the democratic form of Government based on the written Constitution; that the right to vote under the Act is only a statutory right and not a constitutional right, so there could be no violation of Article 14 of the Constitution. Section 3 is only a determination which ensures the command of the party whip or the discipline in the party. He relied on certain books on Constitutional Law which emphasise the party system in a democratic form of Government and submitted that even though our Constitution does not expressly stipulate elections based on party system, that is also a part of the basic structure of the Constitution which is based on the party system and if this view is accepted as correct, Section 3(1) (b) of the Act cannot be impeached on the ground that a person is prevented from voting against the party whip or the party programme. He relied on the

decision of the Punjab & Haryana High Court reported in Parkash Singh Badal and Others Vs. Union of India and Others, in support of his contention.

3. In reply, the Counsel for the petitioners submitted that though the functions of the Zilla Parishad members and the Mandal Panchayat members are different from those of the Parliament and Assembly members, Section 3(1)(b) is bad in law in the absence of a proper definition of the word "defection" and the members of Zilla Parishad and Mandal Panchayat members too have a right to express their opinions freely and frankly even in regard to the developmental matters entrusted to the local bodies and such expression of opinions cannot be controlled/curtailed by the party whip or party mandate; that the decisions relied upon by the Government Pleader are not applicable to the facts of these cases as the power of judicial review is taken away by the provisions of Section 3 read with Section 8 of the Anti-defection Act.

4. The genesis of the impugned Act could be traced to certain unhealthy and unsavoury trends in our body of politic since the year 1967. In the book "Politics of Power" its author Subash C. Kashyap has said:

"Significantly, almost every single case of collapse of a State Government during this period was direct result of change of allegiance b(SIC)e legislators, several other States where Governments did not topple were also affected, to a larger or smaller degree, by the changing of party allegiance by legislators. Defections on such a vast scale and of such great consequence to the Country's political system were unprecedented. According to some commentators, these defections were merely a North Indian phenomenon and stemmed from the backwardness and lack of political maturity and awareness in the region. However, this is factually incorrect. Viewed in the historical perspective, it would be seen that if in the pre-independence period lead in this matter was given by U.P., after independence, States like Tamil Nadu, Andhra and Kerala were among the first bastions of defection politics in India. After the 1967 general elections also, States in the southern parts of India - or for that matter, in any other large part - have not been completely immune from defection politics. The outstanding performers in the earlier stages of the post-1967 period were the State of Haryana, U.P., Rajasthan, Madhya Pradesh, Punjab, Bihar and West Bengal and the Union Territories of Manipur and Pondicherry. It meant constitutional crisis or near crisis in almost each one of them at one time or the other.

The split of the Congress in November, 1969, added a new dimension to the phenomenon. After the 1971 election to Lok Sabha, the trend reached its climax when three Governments in Mysore, Uttar Pradesh and Gujarat fell in quick succession in the last week of March, 1971. The fall of the Veerendra Patil, Ministry of the Congress (O) was followed by the imposition of the President's Rule in the State on March 27. The S.V.D. Ministry in Uttar Pradesh was defeated in the Assembly on March 30 and the Congress (R) leader, Shri Kamalapati Tripathi was invited by the Governor to form a new Government. The last of old Congress Governments appeared to be on the way out with Shri Hitendra Desai

having submitted the resignation of his Ministry in Gujarat on March 31 even if only as a calculated move to make one last effort for the survival of his leadership and possible revival of Congress (O) majority by inducing some return defections. The resignation was submitted quickly after bulk defections from Congress (O) to the Congress (R) in the wake of the mass support received by the latter in the elections to Lok Sabha. The fate of the S.V.D. Ministry in Bihar appeared to be no better. The coalition was tottering under the mounting pressure of the increasing members in the opposition ranks.

Since the fourth general elections in 1971, from among the 4,000 and odd members of the Lok Sabha and the Legislative Assemblies of the States and the Union Territories there have been some 1969 cases of defections. Thus, by the end of March 1971, approximately 50 per cent legislators changed their affiliations. Several legislators did so more than once. In the case of State Assemblies, as much as 52.5 per cent of the total membership has been involved or, in other words, more than half of the State legislators changed their political affiliations at least once. The percentage would appear much more alarming if we leave out the membership in States like Tamil Nadu, Andhra, Assam, Jammu and Kashmir, Nagaland and Maharashtra where Governments, whether Congress or non-Congress, somehow happened to be more stable and changes of political affiliations or defections from parties did not become so very frequent.

With an average of more than one legislator changing his label each day and for some time about one Government falling each month, it is not surprising that the subject came to be discussed rather widely - even though somewhat loosely - by intellectuals, legislators, politicians and others. During the last four years, several round-table conferences, symposia and seminars on this subject have been held under the auspices of learned societies."

In his book titled "Does our Constitution need a second look?" by Sh. Paras Dewan, Professor of Law, Punjab University, the learned author has discussed the problem of political defections under the head "Anti Defection Law: Do we need it" thus:

"The history of virulent politics of defections relates to the 1967 General Elections. Before the 1967 General Elections, the Congress had enjoyed the luxurious two-thirds majority in the Lok Sabha and in most State Legislative Assemblies, and, therefore, the scope for politics of defection was not much; defections were so few as to attract any notice. But in the 1967 General Elections the Congress was reduced to a bare majority party in the Lok Sabha. Worst happened in the States, not merely the Congress lost its hegemony, but it was not in a position to form its Government in quite a few States. The curious phenomenon that occurred was that in most of the States, no single party was in a position to form a Government. The Congress could not secure absolute majority in West Bengal, Bihar, Uttar Pradesh, Rajasthan and Punjab, and was reduced to the second position in Kerala, Madras and Orissa. This led to the emergence of coalition, or the so-called united front, Governments. The

heterogeneous opposition parties which failed to forge an alliance before the elections came together with the only object of wielding power; anti-Congressism was the only bond that united them. The political parties which fought each other bitterly, the political parties which had rabid ideological differences, came together. The most united front Governments included within their fold the entire political spectrum of all non-Congress political parties. Some shared the power, some became merely the alliance partners. The ideological cleavage between the political parties continued, but with a view to wielding power, the alliance partners compromised on matters of principle. For instance, in Punjab the Akali Dal (Sant Fateh Singh Group) and the Jan Sangh came together and formed a coalition Government on the basis of a common minimum programme. The coalition Government was supported by all the other non-Congress parties by the Master Tara Singh Akali Group, the CPI, the CPM, the SSP, the Republican Party and the six Independents. In some States the United Front Governments came into existence without any common minimum programme and with the help of the Congress defectors. This is what happened in Uttar Pradesh, Haryana and Bihar. But the cleavage between these heterogeneous groups was very deep-seated. The differences could be shelved, but could not be ironed out. These opportunistic alliances had a very narrow political goal to remain in power.

Based and sustained as these United Front Governments were on the politics of defections the toppling game was in full swing, adding the most ignominious chapter in the history of the parliamentary institutions. Of these coalition Governments - in the grand experiment in ignominy - the Jan Sangh, Akali Coalition is, by far, the best case history. With a ministry of five and with a backing of 53 MLA's out of 104, the Gurnam Singh Government came into being. But within a few weeks the Government swelled to twenty ministers. Practically each Congress defector was provided with a berth in the Ministry. The Congress did not lag behind in the game of defection. End justified means. Foulest possible means were adopted to produce defections from each other's rank; no price was too heavy. The differences between Gurnam Singh and Laxman Singh Gill also surfaced. Gill with sixteen MLA's left the United Front Government and thus within nine months the Gurnam Singh Government fell. Then came the Gill Govt. with the Congress support, but could not survive beyond nine months. On August 23, 1968 the President's rule was imposed on the State. The story of Government-making is much more bleak elsewhere, Bihar presented an extreme example of politics of defections. The Governments came into being and were thrown out almost over-night. In Bihar at least 85 MLA's changed sides twice, and some of them even four times. The same drama was staged in other states with more or less the same fanfare and infamy.

The unattached independents and party defectors held the balance and dictated the terms to whichever side desired to form a Government. Defections and multiple floor crossing inducted a pattern of flux and instability to the Indian politics in which the government was at the mercy of floating independents and party defectors who enjoyed powers far greater than their numbers would

ordinarily command. The number of defectors from Congress, was 175 and to the Congress was 139 in the States during one year after the 1967 general elections. Between 1967 and 1970 some 800 MLA's were involved in the politics of defections; of these 155 were rewarded with office-84 of them securing cabinet rank.

It became obvious that the common hatred for Congress or bare anti Congressism could not be a substitute for policy. And within a span of two years, one after the other, all the united Front Governments fell, leading to the mid-term poll of 1969.

The politics of defection has put a heavy strain on the functioning of democracy and Parliamentary form of Government in India. The so-called united front governments had neither ideological cohesion nor organisational bond. The people reacted against defectors. They mocked and jeered at the defectors with the remark of "Aya Ram Gaya Ram". It was voiced that an elected representative should not be allowed to change his party's loyalty without seeking popular approval in a bye-election. A committee against defections was set up with JP as one of its members. The Election Commission came out with the suggestion that the cure for defection was the reduction of the number of political parties. The Union Home Ministry's prescription was that a law should be enacted under which the defector would cease to be the member of the legislature."

5. This Court, apart from the factual information furnished by these authors who had made a special study of the defections of the Members of the Parliament and Assemblies from one Party to the another, not in public interest but in furtherance of their personal interests could also take judicial notice of the subsequent sordid events in Haryana, in Andhra Pradesh and in recent times in Tamil Nadu where the entire Group of elected members or a sizeable number of them over-night changed their political hues and allegiance with a view to form, according to them a democratic form of Government.

6. The Act was promulgated on the 5th day of May, 1987, and it repealed the Ordinance which was brought into force on 29-12-1986. The Act is given retrospective effect u/s 1(2) and accordingly, it came into force on the date the Ordinance was brought into force. Earlier, this Court had upheld the provisions of Section 1(2) of the Act in Writ Petition No. 12984 & 12986 of 1987 and other connected petitions, D.R. Shivappa Gowda Vs. Zilla Parishad, Chief Secretary, wherein the validity of the provisions of Section 1(2) was challenged on the ground that they were violative of Article 20(1) of the Constitution. But, in those cases, the provisions of Sections 3 and 4 of the Act were not challenged and therefore, that point was not considered in those petitions. Though the word "defection" is not defined in the Act under Sub-section (vi) of Section-2, "Political Party" is defined as under:

""political party" in relation to a Councillor or member means a political party recognised by the Election Commission of India as a National Party or a State

Party in the State of Karnataka under the Election Symbols (Reservation and Allotment) Order, 1968, and to which he belongs for the purpose of Sub-section (1) of Section-3."

Petitioners have not made any grievance of the definition of the word "Political Party." But their grievance is that the word "defection" was not defined in the Act. As noticed earlier they have no grievance about Section 3(1)(a) of the Act as that relates to voluntary resignation of the membership of the Party by a member belonging to that party. But, their challenge is to Section 3(1)(b) of the Act which reads as under:

"3. Disqualification on the ground of defection.

(1) Subject to the provisions of Section 4, a Councillor or a member, belonging to any political party, shall be disqualified for being such Councillor or member, -

(a)...

(b) if he votes or abstains from voting in any meeting of the Municipal Corporation, Municipal Council, Zilla Parishad or Mandal Panchayat contrary to any direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority and such voting or abstention has not been conducted by such political party, person or authority within fifteen days from the date of voting or such abstention:

Provided that no Councillor or member shall be so disqualified if the number of Councillors or members so voting or abstaining from voting constitutes not less than one half of the total number of Councillors or members belonging to the political party in Zilla Parishad, Mandal Panchayat, Municipal Corporation or Municipal Council, as the case may be."

Section 3(1)(b) of the Act, on its plain terms does not impose an absolute bar from voting or abstaining from voting in any meeting of Zilla Parishad or Mandal Panchayat. Such voting or abstaining from voting contrary to any direction issued by a political party to which a person belongs is permitted if prior permission of such political party is obtained or such voting or abstention from voting has not been condoned by such political party, or person or authority authorised by it within 15 days from the date of voting or such abstention. There is also a proviso to Section 3(1)(b) of the Act which relaxes the rigours of the disqualification and that is that if a number of persons so voting or abstaining from voting constitutes not less than 1/2 of members belonging to a political party in Zilla Parishad or Mandal Panchayat, they shall not be disqualified under the provisions of Section 3(1)(b) of the Act. Since we are dealing with the case of members of Zilla Parishad or Mandal Panchayat, reference to Municipal Corporation or Municipal Council is not necessary for the purpose of these Writ Petitions. By a suitable amendment to Zilla Parishad Act the disqualification prescribed in Section 3 of the Act is extended to the Mandal Panchayats and Zilla Parishad. In the case of

an independent member, u/s 3(2) he could be disqualified from being a member if he joins a political party after such election. u/s 3(3), a nominated member of Mandal Panchayat is disqualified from being a member of Mandal Panchayat if he joins any political party after the expiry of six months from the date on which he is so nominated. Section 4 which is the machinery for deciding disqualification provides that a complaint against the defector should be submitted u/s 3 to the Chief Executive Officer of the concerned local authority who shall within 24 hours from the receipt of such complaint refer the same for decision to the Chief Secretary to Government and in the case of Mandal Panchayat to the Chief Secretary of the Zilla Parishad and this authority has to decide the question within 7 days after receipt of the reference by him and his decision shall be final. The complaint as to defection should be forwarded to the Chief Executive Officer of the concerned local authority. Chief Executive Officer is defined in the explanation to Section 4 of the Act, that is, in the case of Zilla Parishad, the Chief Secretary of Zilla Parishad and in case of Mandal Panchayat, the Secretary of the Mandal Panchayat. Section 8 bars the jurisdiction of Court in respect of any matter connected with the disqualification of a member under this Act. The other provisions are not relevant for the purpose of these Writ Petitions and the petitioners have also not made any grievance about the other provisions.

7. In the light of the submissions made by the learned Counsel for the petitioners, the first important question that has to be decided is whether the absence of definition of the word "defection" in the Act has any bearing on the constitutional validity of the Act.

8. Though the word "defection" is not defined in the Act, it is clear from the preamble to the Act that it was enacted to prohibit defections by the members of Zilla Parishad and of Mandal Panchayat. From the title to the Act and its preamble the meaning of the word "defection" could be understood clearly and unambiguously. The marginal note to Section 3 of the Act reads as under:

"Disqualification on the ground of defection."

That disqualification is attributed to two grounds, firstly, if a member had voluntarily given up his membership of the political party to which he belongs or if he votes or abstains from voting in any meeting of the Zilla Parishad or Mandal Panchayat etc. So, in the context in which these words are used "votes or abstains from voting" in Section 3(1)(b) the meaning of the word "defection" becomes clear, that is to say, defection means that a member should vote or refrain from voting in any meeting of Zilla Parishad or Mandal Panchayat contrary to the directions issued by the concerned political party, subject to the proviso contained in Section 3(1)(b) and subject to the conditions prescribed u/s 3(1)(b). Therefore, no infirmity could be attached to the constitutional validity of the Act on the ground that the word "defection" is not defined under the Act. Section 3(1)(a) and 3(1)(b) are self-explanatory and for the purpose of the Act, the word "defection" has to be understood on the plain terms of Section 3(1)(a) and 3(1)(b).

9. The next point for consideration is whether any fundamental rights of the petitioners have been infringed by imposing certain restrictions on their right to defect all because they happen to be the members of a political party.

The argument of the learned Counsel for the petitioners is that the Constitution does not prescribe any party system in our Parliamentary form of democracy; that the membership of a political party cannot be a criteria to test the validity of the acts of defection as the right to defect cannot be confused with the right to dissent and if that distinction is kept in view, voting or abstaining from voting contrary to the stipulation in Section 3(1)(b) or to the proviso to Section 3(1)(b) would not amount to defection at all. According to the petitioners, the party system has no place in our Constitutional scheme of Government and nowhere there is any reference to the Party system in the three branches of the Government, namely, the Executive, the Legislature and the Judiciary and therefore, the membership of a particular political party is of no relevance and of no consequence to the exercise the right to vote or not to vote in any election contrary to the party whip or the party mandate. This argument raises a political as also a constitutional question as to the relevance of party membership in our form of Government and no direct authorities of the Supreme Court are brought to my notice. However on this point a useful reference could be made to certain commentaries on the Parliamentary form of Government by some well known Constitutional Pundits on this subject.

In the book "Modern Constitutions" by K.C. Wheare, the relevance of a political party upon the working of the Constitution is discussed:

"Party is perhaps the most important influence upon the working of a Constitution. So important is it indeed that one is tempted to say that the constitution is a mere skeleton; it is party which provides the flesh and blood, which gives to the body politic its life and individuality. This may be an exaggeration, but there is a great deal of truth in it. Yet few Constitutions refer specifically to party. Their framers sometimes ignored the existence of party, or thought it undesirable; in most modern Constitutions party is assumed to exist and to be essential to free government, but it is not thought necessary or desirable to recognize or regulate it in the Constitution itself. It is only in the so-called "one-party" states that a party is given the honour of mention by name in the Constitution, as when, in Article 126 of the Constitution of the U.S.S.R. (1936) it is declared that "the most active and politically conscious citizens from the ranks of the working class and other strata of the working people unite in the Ail-Union Communist Party (of Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and which represents the leading nucleus of all organizations of the working people, both social, and state".

The effect which the factor of party has upon the working of a Constitution is not always easy to calculate, and it varies from country to country. In the United States, while it has clearly strengthened the executive, it provides also strength

to Congress in its battles with the executive and results in the virtual paralysis of American government at certain times. In France, under the Third and Fourth Republics, the multi-party system weakened the cabinet. The Constitution endowed the executive with considerable powers, yet it could not exercise these powers with resolution or certainty because it could not count upon continuous or effective party support. Thus a set of political circumstances, outside the formal Constitution, determined the balance of power between the cabinet and the legislature in France. In some other countries of Continental Europe, however, a multiparty system does not produce such great instability of government. In Holland and Belgium and in the Scandinavian countries, parties are readier to form a coalition government with greater security of tenure than that enjoyed by most French governments. In countries which two major parties are the contestants for power, it is common to find a cabinet in a stronger position relatively than in countries with a multi-party system. But it is not right to generalize. In each case it is necessary to analyse the structure of parties to discover how much real cohesion and unity there is behind the facade. Canada, for example, has two major parties, but the Liberal Party, though in power for many years, had to make many compromises within itself to reconcile the differences of its French-Canadian supporters with their English-speaking colleagues. A Canadian cabinet may at times exhibit the caution and compromise usually associated with coalition government."

In "Constitutional and Administrative Law" sixth edition by O Hood Phillips and Paul Jackson what is meant by Representative Government is stated as:

"It is implied in what has been said of the British Constitution that the legislature "represents" the people in a general way. Responsible government involves representative government, though the converse is not necessarily true. A general election nowadays is in effect the election of a prime minister, the leader of a political party with a certain programme political parties are a development since 1688. They rest almost entirely on convention or merely political fact, though their existence was assumed by the Ministers of the Crown Act 1937, which defined the Leader of the Opposition and granted him a salary.

Representative government presupposes that the electors are free to organise themselves in political parties, and (within the limits imposed by the requirements of public order and peaceful change) to express their views and to criticise the government. The party system is inevitable in a democratic country, since men disagree about political ends and means. It is a convenient device to enable the majority to have their way and the minority to have their say". Party organisation exists both in the constituencies and in Parliament. Parties are voluntary associations, subject to the general law. They may soon be provided with statutory funds. Although, as George Tierney said, it is the duty of the Opposition to oppose, the responsible aspect of the party system is brought out in the expression "His Majesty's Opposition," which was coined - originally as a joke - by J.C. Hobhouse early in the last century.

Representative government is now assisted also by secret ballot, universal adult suffrage, independent Boundary Commissions, and a strict limitation of the powers of the House of Lords as against the House of Commons.

In contrast to other forms of political system the British system is described as a liberal democracy. It is a qualified democracy for the activity of government is limited; society is recognised as being pluralistic, that is to say, government is not in the interest of any one group or groups but in the common interest the majority opinion prevails but minorities are given a chance to become the majority."

In Constitutional Law by E.C.S. Wade and A.W Bradley, 8th edition, the chapter "The Functions of Parliament" should be noticed. The relevance of party system in regard to the functions of Parliament is found under the heading "Members and their Constituents". It reads as:

"Under adult suffrage a member represents about 60,000 electors. Political organisation on a scale which only a nation-wide machine can operate is essential to secure election. One reason for the disappearance of independent members was because none of them could command such an organisation without which no candidate could hope today to succeed. Candidates are thus necessarily selected because of their acceptability as members of a party. Members of Parliament represent the whole community, responsible in the last resort, as Burke pointed out, to their own consciences. They are not mere delegates of their constituents. Neither legally nor morally has a constituency a right to recall its member. But a member who changes his party may be expected to offer his resignation, unless he has strong local support for retaining his seat."

In page 24 of the same book, under the heading "Local Government" the characteristics of local authorities are described and enumerated. One of the characteristics is Party Politics. The learned authors have stated:

"The membership of local authorities is decided through direct election of Councillors, who must stand for election at three-yearly intervals; county and borough councils also include aldermen, in the proportion of one alderman to three Councillors, who are elected by the body of Councillors to serve for six-yearly periods. The political parties today play a large part both in the nomination of candidates and in organising electoral support. In councils where political rivalry is keen, party policy may largely govern the making of key decisions. Valuable political experience is to be gained in local Government and the parties help to foster public interest in elections. Party control of a council also focuses responsibility for its policies on an organised group. But the influence of national party or divisions at a local level may sometimes be excessive. Some councils are a local replica of the two-party system in the House of Commons, including the party whips; in others there is more scope for the independent member."

10. From these treatises on Constitutional Law and Local Government Laws, it cannot be gainsaid that the relevancy of political party either at the national level or at the village panchayat level could be ignored or undermined on the ground that membership of such political party impinges on the fundamental right of a member to vote according to his conscience. It should be remembered that the right to vote in Zilla Parishad or Mandal Panchayat is not a fundamental or constitutional right, but it is a statutory right conferred under the relevant statute. This is clear from the observation of the Supreme Court in *Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*, . Therefore, it is futile to contend that the Legislature did not contemplate that membership of a political party is one of the essential features for the establishment of Panchayat Raj and that is the reason the preamble to the Act makes it clear that the Act is meant to prohibit defection by the members of the Zilla Parishad and Mandal Panchayat from the political parties by which they were set up as candidates and the matters connected therewith. The Zilla Parishad Act may be silent as to the relevancy of Political Party in the formation of Mandal Panchayat or Zilla Parishad. But the working of Mandal Panchayat and Zilla Parishad is a matter of detail and that detail rests necessarily on the party system and the membership of a political party to which a member belongs. The definition of "Political Party" is found u/s 2(vi) of the Act. No grievance is made out by the petitioners as regards the definition of the word "Political Party" either on the ground that it is vague or that definition is opposed to any of the rights conferred on the petitioners under Article 14 or 19 of the Constitution. It is common ground that all the petitioners belong to one political party or the other as defined u/s 2(vi) of the Act. Therefore, there is no substance in the argument of the petitioners that membership of a political party is not a relevant consideration for imposing the disqualifications u/s 3(1)(b) of the Act. As rightly contended by the learned Counsel for the contesting respondents including the State Government, if the petitioners are aggrieved by the disqualifications imposed u/s 3, there is no statutory/legal bar for them to resign from the membership of the political party to which they belong and seek a fresh mandate from the people whom they claim to represent and whom they claim to serve by joining another party or even as independent candidates.

11. The third contention that requires consideration is whether the impugned Act is opposed to the basic structure of the Constitution. As noticed earlier, the petitioners have relied heavily on the decision of the Jammu & Kashmir High Court. That is a decision of the Full Bench of that Court (equally divided). But, before we go into the details, the provisions of the Jammu & Kashmir Act must be examined with reference to the provisions of the impugned Act.

Section 24-G of Jammu & Kashmir Representation of the People Act which came up for consideration before the Jammu & Kashmir High Court reads thus:

"24-G. Disqualification for being a member of either House of Legislature. A person shall be disqualified for being a member of the legislative Assembly or the Legislative Council of the State :-

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

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

Explanation: For the purposes of this section political party means:

(a) A political party classified as a recognised political party under any law or any rule, regulation, order or notification having the force of law with respect to matters relating to, or in connection with, election to the Legislative Assembly or the Legislative Council of the State;

(b) any other political party which is recognised by the Speaker of the Legislative Assembly or, as the case may be, by the Chairman of the Legislative Council, as a political party."

We are now dealing with a State enactment. Whether the theory of basic structure of the Constitution could be pressed into service to test the validity of a State enactment is no longer open to any legal debate in view of the decision of the Supreme Court in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, . The Supreme Court has ruled in that decision thus:

".....The argument regarding the invalidity of the Representation of the People (Amendment) Act, 58 of 1974, and of the Election Laws (Amendment) Act, 1975 has, however, no substance. The Constitutional amendments may, on the ratio of the Fundamental Rights case, be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental Rights case that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution and (2) of the Constitution. "Basic Structure," by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a constituent power. "The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features" - this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."

The same view is reiterated by the Supreme Court in *Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others*, .

That apart, the Constitutional rights of a Member of Parliament or of a Member of Legislative Assembly cannot be equated to the rights of a Member of a Zilla

Parishad or a Member of a Mandal Panchayat under the Zilla Parishad Act. Whereas in a legislature the elected member participates in making laws for the State, a Member of a Zilla Parishad or of a Mandal Panchayat does not make any law. The duties and functions of a Zilla Parishad and Mandal Panchayat Member are defined in the Zilla Parishad Act. Section 56 of the Zilla Parishad Act provides for the general functions of the Mandal Panchayat and they are as follows:

"56. General functions of Mandal Panchayats. - (1) It shall be the duty of every Mandal Panchayat, as far as the funds at its disposal will allow to make reasonable provision within the Mandal in regard to the following matters, namely,

- (a) Sanitation and Health.- (i) construction, repair and maintenance of public wells, ponds and tanks and supply of water for domestic use, for cattle and for any other public purposes;
- (ii) sanitation and conservancy and prevention and abatement of nuisance;
- (iii) construction and maintenance of public latrines;
- (iv) disposal of unclaimed corpses and carcasses and unclaimed cattle;
- (v) regulating the collection, removal and disposal of manure and sweepings,
- (vi) preventive and remedial measures against epidemics;
- (vii) regulation of sale and preservation of meat, fish and other perishable articles of food;
- (viii) maintenance and regulation of cremation and burial grounds;
- (ix) encouragement of human and animal vaccination;
- (x) construction and maintenance of slaughter houses;
- (xi) regulation of buildings and shops and eating and entertainment houses;
- (xii) relief for the destitute;
- (xiii) destruction of rats and stray and ownerless dogs,
- (xiv) regulating the curing, tanning and dyeing of skins and hides;
- (xv) assisting in extinguishing fires,
- (xvi) regulating and checking of offensive or dangerous trades;
- (xvii) cleaning of public roads, drains, bunds, tanks, and wells (other than tanks and wells used for irrigation/ and other public places or works;
- (xviii) provision of house sites for residents of the village in the Mandal;
- (xix) any other matters relating to sanitation and health. (b) Public works and amenities.-

- (i) construction, repair and maintenance of roads including cart tracks, drains, bunds and bridges vested in the Mandal Panchayat;
 - (ii) removing of obstructions and projections in public streets or places and in sites which are open to the enjoyment of the public whether such sites are vested in the Mandal Panchayat or belong to the Government but not being private property;
 - (iii) maintenance of buildings transferred to the Mandal Panchayat or of Government buildings, under the control of the Mandal Panchayat;
 - (iv) maintenance and regulation of grazing lands, and of tanks and wells meant for drinking purposes;
 - (v) lighting of the villages;
 - (vi) regulation of fairs (including cattle fairs) and festivals of the villages or of local importance or those that are entrusted to it by the Zilla Parishad;
 - (vii) planting and preservation of trees;
 - (viii) construction and maintenance of Dharmashalas Choultries and other similar institutions;
 - (ix) establishment and maintenance of markets;
 - (x) construction and maintenance of houses for the conservancy staff of the Mandal Panchayat and other functionaries;
 - (xi) construction and maintenance of buildings for warehouses, shops and purchasing centres.
- (c) Agriculture and Animal Husbandry,
- (i) formulation and preparation of the Mandal Panchayat agricultural production plans;
 - (ii) improvement and betterment of economic conditions of persons residing in the Mandal;
 - (iii) promotion and development of agriculture;
 - (iv) the establishment and maintenance of nurseries and stores of improved seeds and agricultural implements, the production and distribution of improved seeds, pesticides and insecticides and the holding of agricultural shows including cattle shows;
 - (v) the propagation of improved methods of cultivation in the mandal including laying out of demonstration plots with a view to increasing production;
 - (vi) the establishment and maintenance of warehouses and granaries;
 - (vii) the establishment and maintenance of cattle sheds; (viii) provision and

maintenance of compost pits; (ix) establishment and maintenance of gardens;
(x) improvement of cattle and their breeding and general care of the livestock;
(xi) development of fishery, poultry and piggery in the mandal.

(d) Welfare of Scheduled Castes and Scheduled Tribes and Backward Classes.-

(i) promotion of educational, economic, social, cultural and other interests of the Scheduled Castes and Scheduled Tribes and Backward Classes;

(ii) protecting such castes and classes from social injustice and all forms of exploitations;

(iii) construction, repair and maintenance of drinking water wells;

(iv) provision of house sites for Scheduled Castes and Scheduled Tribes.

(e) Other matters.-

(i) preparation of plans for the development of the area within the, mandal;

(ii) assisting the implementation of soil conservation programmes of the Government;

(iii) establishment and maintenance of village libraries and reading rooms;

(iv) assistance to the residents of the villages in the mandal when scarcity conditions obtain or when any natural calamity occurs,

(v) management and control of washing and bathing ghats which are not managed by any other authority;

(vi) promotion, improvement and encouragement of cottage industries;

(vii) implementation of schemes for the development of village industries and cottage industries, formulated by the Khadi and Village industries Commission or the Karnataka. Khadi & Village Industries Board or any other authority or agency.

(viii) organising volunteer forces for performing community labour;

(ix) management of minor religious institutions;

(x) promotion and development of Co-operative Societies;

(xi) maintenance of essential statistics of the villages in the mandal;

(xii) watch and ward of the villages in the mandal and crops therein;

(xiii) development of mandal forests and farm forestry;

(xiv) maintenance of records relating to the survey of village sites and public and private properties therein;

(xv) establishment and maintenance of cattle pounds; (xvi) promotion of welfare of women and children; (xvii) implementation of schemes for adult literacy;

- (xviii) organising and mobilising the village youth for constructive and productive purposes including training in rural sports and games and other cultural activities;
- (xix) such other functions as may be entrusted to it by the Zilla Parishad or the Government on such terms and conditions as may be prescribed:

Provided that the cost of watch and ward of the villages in the mandal and crops therein may be recovered by a Mandal Panchayat by levy of fees on such persons and in such manners as may be prescribed.

(2) A Mandal Panchayat may also make provision for carrying out within the mandal any other work or measure which is likely to promote the health, safety, education, comfort, convenience or social or economic well being of the inhabitants of the mandal.

(3) A Mandal Panchayat may, by a resolution passed at its meeting and supported by two-thirds of its total number of members,-

(a) make provision for or make contribution towards any exhibition, conference or seminar within or outside the mandal but within the district; or

(b) make contribution to any medical, educational or charitable institution or any other institution of public utility, within or outside the mandal whether such institution is under public or private management."

Section 182 of the Zilla Parishad Act provides for the functions of the Zilla Parishad and they are as follows:

"Functions of Zilla Parishads.-

(1) Subject to such exceptions, restrictions and conditions as may from time to time be specified by order by the Government, it shall be the duty of every Zilla Parishad to make reasonable provision for the following matters within the area under its jurisdiction.

I. Development programmes.

Overall supervision, co-ordination and integration of development schemes at Taluk and District levels and preparing the plan for the development of the District.

II. Agriculture.- (a) Promotion of measures to increase agricultural production and to popularise the use of improved agricultural implements and the adoption of improved agricultural practices.

(b) Opening and maintenance of agricultural seed farms and commercial farms.

(c) Establishment, maintenance and management of and financial assistance to, agricultural schools, but not including matters relating to -

(1) laying down of syllabus;

- (2) prescription of text-books; and
- (3) conducting annual examination.
- (d) Establishment and maintenance of godowns.
- (e) Co-ordination of efforts in Co-operation with Mandal Panchayats for crop protection.

III. Animal Husbandry.- (a) Establishment and maintenance of District, Taluk and Village veterinary hospitals, first aid centres and mobile veterinary dispensaries

(b) In co-operation with the Mandal Panchayats measures for the improvement of the breed of cattle and other livestock and poultry.

(c) Dairy developments.

(d) Protective measures for controlling contagious diseases.

IV. Welfare of the Scheduled Castes and Scheduled Tribes and Backward Classes.-

(a) Promotion of educational, economic, social, cultural and other interests of the Scheduled Castes and Scheduled Tribes and Backward Classes.

(b) Protecting such Castes, Tribes and Classes from social injustice and all forms of exploitation.

(c) Establishment and management of hostels of such Castes, Tribes and Classes.

(d) Supervision of the implementation of all schemes for the welfare of Scheduled Castes and Scheduled Tribes and Backward Classes in the district, in particular the management of hostels in the district and the distribution of grants, loans and subsidies to individuals.

V. Building and Communications. -

(a) Construction, maintenance and repairs of district roads (roads other than State High Ways and Mandal Panchayat roads) and bridges.

(b) Construction of administrative and other buildings in connection with the requirements of the Zilla Parishad.

VI. Public Health. -

(a) Management of hospitals and dispensaries (excluding civil hospitals in the district headquarters and other hospitals and dispensaries under the management of municipal corporations or municipal councils).

(b) Establishment and regulation of fairs and festivals, including cattle fairs.

(c) Improvement and extension of village sites (including grants and loans for the purposes).

(d) Survey of village sites and of public and private property therein and

maintenance of records pertaining thereto.

VII. Irrigation and ground water resources. -

(a) Construction, renovation and maintenance of minor irrigation works with an achkat not extending beyond the district.

(b) Providing for the timely and equitable distribution and full use of water under irrigation schemes under the control of the Zilla Parishad.

(c) Development of ground water resources.

VIII. Industries and Cottage Industries. -

(a) Promotion of rural and cottage industries.

(b) Establishment of training cum-production centres.

(c) Organisation of marketing facilities for products of cottage and village industries.

(d) Implementation of schemes for the development of cottage industries and village and small scale industries of State Boards and All India Boards and Commissions.

IX. Horticulture. -

(a) Rural parks and gardens.

(b) Cultivation of fruits and vegetables.

(c) Farms.

X. Co-operation. -

(a) Promotion and extension of activities of co-operative Societies

(b) Taking shares in co-operatives in those cases in which the Government can take shares, subject to conditions laid down by the Registrar of Co-operative Societies

XI. Education and Social Education. -

(a) Implementation with the collaboration of Mandal Panchayat schemes of adult literacy undertaken by other bodies.

(b) Survey and evaluation of education activities.

(c) Assisting, encouraging and guiding of educational activities in the district including the establishment and maintenance of primary and secondary school in the district.

(d) Coordinating the efforts of Mandal Panchayats and the State voluntary organisations for rendering social service in villages.

(e) Promoting and encouraging in co-operation with the Mandal Panchayat institutions for rendering social service such as youth clubs, mahila mandals and farmers' associations.

(f) Establishment and maintenance of general hostels, ashram schools and orphanages.

XII. Statistics.-

(a) Publication of statistical and other information relating to activities of Mandal Panchayats and Zilla Parishads.

(b) Co-ordination and use of statistics and other information required for the activities of the Mandal Panchayats and Zilla Parishads.

(c) Periodical supervision and evaluation of project and programmes entrusted to the Mandal Panchayats and Zilla Parishads.

XIII. Fisheries. - Development of fisheries in irrigation works vested in the Zilla Parishad.

XIV. Rural Electrification. - Rural electrification.

XV. Distribution of Essential Commodities. - Distribution of essential commodities.

(2) The Government may, by notification in the Official Gazette, omit any entry from the list under Sub-section (1) or add any entry thereto or amend any such entry. On the issue of such notification the list shall be deemed to have been amended accordingly. Every such notification shall be placed before each House of the State Legislature.

(3) The Government shall entrust to the Zilla Parishad the implementation of schemes under the State Plans in respect of the development functions of the Zilla Parishad mentioned in the Sub-section (1) which can be executed by the Zilla Parishad. When schemes are entrusted under this sub-section, the Government shall by appropriation by law at the beginning of each financial year transfer, to the credit of each Zilla Parishad Funds, the funds necessary for implementation of such schemes"

12. From the very nature of these functions, it cannot be said that their election to the Mandal Panchayat or to the Zilla Parishad as the case may be confers on them power to make any laws for the decentralization of powers or for the purpose of promoting the development of democratic institutions and secure a measure of participation by the people in the State Five Year Plan and in local and Government electorate. The object and purpose of the Zilla Parishads Act is to "provide for the establishment in rural areas, of Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats to assign to them local Government and judicial functions and to entrust the execution of certain works and development schemes of the State Five Year Plans to the Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and to provide for the

decentralization of powers and functions under certain enactments to those local bodies for the purpose of promoting the development of democratic institutions and securing a greater measure of participation by the people in the said plans and in local and Governmental affairs and. for purposes connected with and incidental thereto." There is no provision in the Zilla Parishads Act which confers on the Members of a Mandal Panchayat or Zilla Parishad a right to make laws for the functioning of the Zilla Parishad or Mandal Panchayat. Therefore, the argument which found favour with the minority view in the *Mian Bashir Ahmad and Etc. v. State of Jammu and Kashmir and Others* AIR 1982 J & K 26 would not be applicable for deciding the validity of the impugned provisions of the Act. In the circumstances, the validity of the provisions of the Act ought not to be decided by the nature of the constitutional rights conferred on a Member of Parliament or a Member of Legislative Assembly. Moreover it should be noticed that the Legislature when it imposed certain reasonable conditions like permission of the party before defection or condonation by the party after defection and the removal of disqualification in case the defecting members constituted not less than one half of the members belonging to the political party in the Zilla Parishad or Mandal Panchayat had kept in view the provisions of other enactments which had been challenged in Courts elsewhere and advisedly imposed those conditions on the right of a Member to vote or abstain from voting in a Zilla Parishad or Mandal Panchayat contrary to the directions issued by the political party to which he belongs and those conditions are found in Section 3(1) (b) of the impugned Act. The petitioners have not established that these conditions u/s 3(1)(b) which enable a Member to avoid the disqualification u/s 3(1) are unreasonable or in any way affect their rights conferred under Article 14 or 19 of the Constitution. Like-wise u/s 3(3) of the Act the nominated member of the Mandal Panchayat is disqualified if he joins any political party on the expiry of 6 months from the date on which he was so nominated. Even an independent member could be disqualified in terms of the provisions of Section 3(2) of the Act. This feature is absent in Section 25-G of the Jammu & Kashmir Act and, therefore, any observations made in the dissenting Judgment of Jammu & Kashmir High Court would not be applicable for deciding constitutional validity of the provisions of the Act. That the validity of the provisions of the impugned Act could be sustained is also clear from the following decisions cited by the learned Counsel for the State Government.

13. A Division Bench of this Court in *H.A.K. RAO v. COUNCIL OF THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA* AIR 1965 Mys112, while dealing with the election to a statutory body like the Council of Institute of Chartered Accountants in India constituted under the Chartered Accountants Act, 1949, observed thus:

"A somewhat faint attempt was made by the learned Advocate for the petitioner to contend that the prohibition in item 2 may operate as unreasonable restriction on the fundamental right of the freedom of speech and expression guaranteed under Article 19(1)(a) and on the fundamental right of the petitioner to carry on

his profession as guaranteed under Article 19(1)(g) of the Constitution of India. We are not satisfied that there is any strength in such a contention...."

Though in this decision, the Division Bench of this Court was concerned with the right of a Chartered Accountant to canvass votes, it has some bearing on the facts of these cases since we are also dealing with statutory rights and not with constitutional rights as in the case of Member of Parliament or of a Legislative Assembly.

In *Jumuna Prasad Mukhariya and Others Vs. Lachhi Ram and Others*, the Supreme Court, while dealing with Sections 123(5) and 124(5) of the Representation of the People Act which imposes restrictions on the Member of Parliament to canvass for and to appeal to the electorate for his election from a particular Parliamentary constituency observed as follows:

"The right to stand as a candidate and contest an election is not a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament. If they want that they must observe the rules. If they prefer to exercise their right of free speech outside these rules, the impugned sections do not stop them. We hold that these sections are "intra vires"."

In *Railway Board Representing The Union of India (UOI) Vs. Niranjan Singh*, , the Supreme Court dealing with the case of a right of Member of a Railway Union to hold meetings within the Railway premises observed as follows:

"There is no fundamental right for anyone to hold meetings in government premises. The fact that those who work in a public office can go there does not confer on them the right of holding a meeting at that office even if it be the most convenient place to do so. The fact that the citizens of the country have freedom of speech, freedom to assemble peaceably and freedom to form associations or unions does not mean that they can exercise those freedoms in whatever place they please. The exercise of those freedoms will come to an end as soon as the right of someone else to hold his property intervenes. Such a limitation is inherent in exercise of those rights, The validity of that limitation is not to be judged by the tests prescribed by Sub-articles (1) and (3) of Article 19. In other words the contents of the freedoms guaranteed under Clauses (a), (b) and (c) do not include the right to exercise them in the properties belonging to others."

In *Sakhawat Ali Vs. The State of Orissa*, the Supreme Court had occasion to test the validity of Section 16 of the Orissa Municipal Act, 1950. Section 16 reads as under:

"(1) No person shall be qualified for election to a seat in a Municipality, if such person.....

(ix) is employed as a paid legal practitioner on behalf of the municipality or as

legal practitioner against the municipality....."

The Supreme Court observed:

"The contention that disqualification prescribed in Section 16(1)(ix) violates the fundamental rights of the Appellant under Article 14 and Article 19(1)(g) is equally untenable. Article 14 forbids class legislation but does not forbid reasonable classification for the purposes of legislation. That classification however cannot be arbitrary but must rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which the classification is made. In other words" the classification must have a reasonable relation to the object or the purpose sought to be achieved by the impugned legislation."

It should also be noticed that Section 3 of the Act does not impose an absolute disqualification in case of defection. It is not in every election to Zilla Parishad or Mandal Panchayat the political party in question issues direction regarding voting. In the case of an independent member the disqualification is incurred if he joins any political party after being elected as an independent member. So also in the case of nominated member, if he joins a political party on the expiry of 6 months from the date on which he is so nominated. However, in the case of a Member who belongs to a political party he suffers disqualification only if he votes or abstains from voting in any meeting of the Zilla Parishad or Mandal Panchayat contrary to the direction issued by the political party to which he belongs or by any person or authority authorised by it in this behalf. So, the disqualification is not automatic but subject to certain conditions.

In the circumstances, the dissenting opinion of Jammu & Kashmir High Court on which strong reliance was placed by the learned Counsel for the petitioners is not helpful for deciding the validity of the impugned Act.

14. Now the argument based on Article 19(1)(c) of the Constitution should be considered. According to the petitioners, the provisions of the impugned Act impose an unreasonable restriction on their fundamental right to form a break away party under Article 19(1)(c) of the Constitution. The simple answer to this contention is it is always open to the petitioners to resign from the party to which they belong and to form their own party or association and no restrictions are imposed on them under the impugned Act to remain in the political party which has sponsored their candidature and voted them into the Zilla Parishad or Mandal Panchayat. If any authority is necessary on this point, the decision of the Supreme Court in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, may be referred to. The Supreme Court rejected a similar contention raised on the constitutional validity of U.P. Sugarcane (Regulation of Supply and Purchase) Act, 1953, and the notification dated 27-9-1954. The Supreme Court in that case observed thus:

"In the first place, assuming that the right to form an association implies a right not to form an association, it does not follow that the negative right must also be

regarded as a fundamental right. The citizens of India have many rights which have not been given the sanctity of fundamental rights and there is nothing absurd or uncommon if the positive right alone is made a fundamental right. The whole fallacy in the argument urged on behalf of the petitioners lies in this that it ignores that there is no compulsion at all on any can egrower to become a member of the Canegrower's Co-operative Society."

Though this observation of the Supreme Court was not endorsed by Constitutional Pundits like Sri H.M. Seervai, it is not necessary to go into that aspect of the case, since the Supreme Court has observed in para 49 as follows:

"There is also another fallacy in their argument and it lies in ignoring that no can egrower is prevented from resigning his membership of a can egrower's Co-operative Society. These are voluntary organisations which a can egrower is entitled to join or not at his choice. If he has once joined it he is also entitled to resign his membership at his choice and the only obstacle to his right of resignation, as has been laid down in the bye-laws of the Society, is the fact of his being indebted to the Society, or the fact of his being a surety for debt due by another member of the Society.

Until these debts are discharged and also until the crushing season during which the can egrowers Co-operative Society has entered into an agreement with the occupier of a factory is over, a member of a Society cannot resign his membership. These restrictions do not fetter his right to resign his membership of the Society. If he became a member of the Society he is bound by the Bye-laws of the Society and can only resign his membership after fulfilling all the conditions which are laid down in the Bye-laws of the Society."

On the very same analogy, there should be no difficulty in taking the view that it is always open to the Members of the Mandal Panchayat to resign from the party to which they belong and contest the elections independently.

For these reasons, it is not possible to uphold the contention of the petitioners that the impugned Act is violative of Article 19(1)(a) and 19(1)(c) and Article 14 of the Constitution.

The right to vote in Zilla Parishad or Mandal Panchayat meetings cannot be put on the same plane as that of a Constitutional right or fundamental right. That right is a statutory right and the statute can control that right by imposing reasonable restrictions. Those restrictions are neither arbitrary nor discriminatory. There is no challenge to the disqualification incurred by an independent member or by a nominated member. All because the petitioners belong to a political party which had sponsored their candidature and had successfully supported their elections, the petitioners cannot claim the Constitutional guarantee under Article 14 or under Article 19(1)(a) and (c) of the Constitution by making a virtue of an evil which has made a mockery of our democratic institutions. For these reasons, the challenge to the Constitutional validity of the provisions of the impugned Act fails.

15. One more contention which requires consideration is that under the impugned provisions of the Act disqualification is incurred for life and not for a period of 6 years as prescribed under the Representation of People Act. It is contended that disqualification for life is arbitrary and, therefore, liable to be struck down being violative of Article 14 of the Constitution. It is contended that a Member of Parliament or a Member of Legislative Assembly is disqualified for a period of 6 years for committing any act of corrupt practice which disentitles him from being a Member of Parliament or a Member of Legislative Assembly and hence there is no good ground to disqualify a Zilla Parishad Member or a Mandal Panchayat Member for life. This argument overlooks the competency of the legislature to make law for establishing a Panchayat Raj. Legislative competency to make the impugned Act was not seriously challenged nor could it be challenged. The impugned Act was made in exercise of the power conferred under Item 5 of the State List (List II). There is no question of repugnancy between the Representation of People Act and the impugned Act as they operate in different fields. The Representation of People Act deals with Parliamentary and Assembly constituency and the impugned Act deals with smaller local bodies, i.e., Zilla Parishad or a Mandal Panchayat. A Full Bench of Patna High Court in *Ram Naresh Rai and Another Vs. State of Bihar and Others*, rejected a similar contention challenging the validity of Bihar Panchayat Raj Act as amended by Bihar Panchayat Raj (Amendment) Ordinance 5/1975. It was held that the said Act as amended was not repugnant to the provisions of the Representation of People Act. Therefore, this contention does not merit any serious consideration. The Full Bench observed as follows:

"....the Representation Act and the Act cannot be held to be repugnant to each other because they are operating in different fields, one prescribed about the preparation of the electoral rolls for the Parliamentary and Assembly Constituencies and the other for a much smaller elective body, the Gram Panchayat. The present Act has been framed not under any item of concurrent list, but under Item 5 of State-List (List II) which contains the following entry:"

16. A faint attempt was made to challenge the validity of Section 4 of the Act on the ground that the authorities constituted for disqualifying a member for his Act of defection offend the basic concept of the Rule of Law since disqualification in the very nature of things results in serious civil consequences in that the disqualified member loses his right to become a Member of a Zilla Parishad or a Mandal Panchayat as the case may be and determination of such disqualification should be entrusted to an independent body such as the Civil Court or the Election Tribunal and not to an Executive authority such as the Chief Secretary to the Zilla Parishad or the Chief Secretary to the Government. A right to impartial adjudication is one facet of the Rule of law. That right depends on the nature of the dispute to be determined. It is not in dispute that voting or abstaining from voting in the Zilla Parishad or Mandal Panchayat meeting is not by secret ballot but by show of hands. The proceedings of the Zilla Parishad or Mandal Panchayat where decisions are taken by show of hands would be part of the Zilla Parishad

or the Mandal Panchayat records, and, consequently, there would be hardly any dispute on the question whether a Member had voted or abstained from voting in any meeting of the Zilla Parishad or Mandal Panchayat. The additional evidence that would be required is whether such voting or abstaining from voting was contrary to the direction issued by the political party to which he belongs without obtaining the prior permission of the political party and whether such voting or abstaining from voting had not been condoned by such political party within 15 days from the date of voting or such abstention. These are all questions of fact which could be investigated by a statutory authority, viz., the Chief Secretary to the Government or the Chief Secretary to the Zilla Parishad. Determination of these facts would not require any elaborate investigation into questions of fact nor do they raise a complicated question of law which would be they raise a complicated question of law which would be beyond the capacity of the Chief Secretary to the Government or the Chief Secretary to the Zilla Parishad. It cannot be said all because the Executive authorities are entrusted with these duties, they would be biased. Further, their decision is always open to judicial review if a person aggrieved by their decision desires to challenge the same. Hence, the machinery provided for the adjudication of disqualification suffered by a member does not offend the concept of the rule of law.

In *The Government of Mysore and Others Vs. J.V. Bhat and Others*, , the Supreme Court observed thus:

"....Policies and schemes, framed under statutory provisions, which affected rights of individuals could impose the obligations upon the authorities taking what were essentially administrative decisions at points at which they begin to impinge on specific individual rights. It is only where there is nothing in the statute to actually prohibit the giving of an opportunity to be heard, but, on the other hand, the nature of the statutory duty imposed itself necessarily implied an obligation to hear before deciding that the "audi alteram partem" rule could be imported. The nature of the hearing would, of course, vary according to the nature of the function and what its just and fair exercise required in the context of rights affected."

In *Rama Varma Bharathan Thampuram Vs. State of Kerala and Others*, , the Supreme Court upholding the power of the Board of Trustees under the Valiamma Thampuran Kovilakam Estate and the Palace Fund (Partition) and The Kerala Joint Hindu Family System (Abolition) Amendment Act (15 of 1978) to partition the properties of the Cochin Royal Families by metes and bounds observed as follows:-

"We realise that the enormous work of dividing the properties has to be carefully carried out. Quasi-judicial responsibilities are implied by the statute in the Board's functions and if the Board breaches these norms and canons the constitutional remedy under Article 226 comes into play. After all. the Board is a statutory body and not an executive creature. It has been saddled with affecting the rights of parties and is bound to act quasi-judicially. Its deviances are not

unreviewable in writ jurisdiction. Therefore, we direct the Board to comply with the requirements prescribed in several decisions of this Court in quasi-judicial jurisdictions. Natural justice is obviously the first as this Court has ruled in a shower of cases especially highlighting in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another*, and *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, . This Court has gone to the extent of holding that natural justice required reasons to be written for conclusions made. In *Organo Chemical Industries v. Union of India*, Writ Petn. No. 4319 of 1978 delivered on 23-7-1979 : (AIR 1979 SC 1803) this Court has held that the absence of a right of appeal does not spell arbitrariness. It is further held in the same ruling that giving of reasons for conclusions is ordinary an important component of natural justice in quasi-judicial tribunals. In short, every facility that a party will reasonably receive before a quasi-judicial body when rights are adjudicated upon, will be available before this Board and we mandate it to extend such facilities and opportunities. We need hardly mention that when properties are sold parties must be intimated and the principles embedded in the Partition Act must be taken note of when properties are valued and allotted. The services of valuers of properties or of Commissioners must also be used. Moreover, parties must be given opportunity to object to reports of Commissioners, if any, appointed. In short the general law, processual and substantive, bearing on allotment of properties cannot be thrown to the winds by the Board merely because Section 3 does not write these details into it. We must hasten to caution that no party can hold the Board in ransom by raising vexatious and frivolous objections and putting in proceeding after proceeding merely to delay or defeat. The Board is geared into completion of the partition with a reasonable speed and that purpose must inform its activities. While every party is entitled to a reasonable voice in the proceedings no party can enjoy the privilege of thwarting the processes of justice. These observations and directions which are built-in in Section 3; in our view, are sufficient guidelines to repel the submission that the power u/s 3(2) is unbridled and unconstitutional."

These observations of the Supreme Court in the aforesaid decision should be taken as a guideline to the authorities to the extent they are applicable to the complaints before them. Needless to say any dilatory tactics by the alleged defectors would not merit any indulgence by the authorities in the interest of proper working of the Zilla Parishads and the Mandal Panchayats on whom a great burden is cast for ushering in Panchayat Raj in this State.

17. At this stage, the challenge to Section 8 of the Act on the ground that it takes away the power of judicial review conferred on the High Court may be conveniently dealt with. The law is well settled. The word "Court" in Section 8 of the Act means the Civil Court. The rights conferred by Articles 226 and 227 of the Constitution can be abridged or taken away only by an appropriate amendment to the Constitution and their operation cannot be whittled down" by a provision like the one contained in Section 8 of the Act. See the decision of the Supreme Court in *The State of Haryana Vs. The Haryana Cooperative Transport*

Ltd. and Others, .

18. Though reliance was placed by the learned Counsel for the contesting respondents on the decision of the Full Bench of the Punjab High Court in Parkash Singh Badal and Others Vs. Union of India and Others, in support of the constitutional validity of the impugned Act, it is not necessary to refer to that Judgment since the Full Bench of the Punjab & Haryana High Court was dealing with the Constitutional validity of 10th Schedule to the Constitution incorporated by the 52nd amendment. I have already held that the membership of the local bodies cannot be equated to the Membership of Parliament or of the Legislative Assembly which are governed by the constitutional rights conferred under the Constitution. Therefore, no reference is necessary to that decision.

19. To sum up, (a) neither the provisions of Section 3(1)(b) nor the provisions of Section 4 of the Act are invalid being violative of Article 14 or Article 19(1)(a) and 19(1)(c) of the Constitution; (b) the provisions of Section 8 of the Act are not bad in law on the ground it takes away the power of judicial review of the actions of the authorities constituted u/s 4 of the Act. The power of judicial review by this Court under Article 226 of the Constitution is not taken away by the provisions of Section 8 of the Act; (c) The Act being a State enactment it is impermissible for the petitioners to challenge the constitutionality of the Act on the ground it is opposed to the basic structure of the Constitution; (d) Right to vote is neither a fundamental right nor a constitutional right, but a statutory right; (e) The Act is a valid piece of legislation and the provisions of Section 3(1)(b), 4 and 8 of the Act do not offend any of the provisions of the Constitution.

For these reasons, there is no merit in the challenge to the constitutional validity of Sections 3, 4 and 8 of the Act. The petitioners are not entitled to the declaration as prayed for.

20. Coming to individual petitions, in Writ Petition No. 11725 of 1987 the petitioners have alleged that they were not heard by the Chief Secretary before the impugned order was made. This Court has already held in D.R. Shivappa Gowda Vs. Zilla Parishad, Chief Secretary, that the Act is applicable to all acts of defection from 29-12-1986 onwards. The grievance of the petitioners is that they were not heard by the authority before the impugned order was made. In the objections filed by the impleaded respondents, it is stated that the petitioners were present on 25-7-1987 as required in the notice dated 21-7-1987 and they were heard before the impugned order was made. Therefore, it cannot be said that the impugned order is violative of the principles of natural justice. The proceedings of the party meeting dated 14-4-1987 were produced before the Chief Secretary in proof of the party whip and the petitioners had not denied that they had not voted for the complainants, i.e., Respondents 4 and 5. The Chief Secretary has found that there was clear violation of the direction of the political party by the petitioners and accordingly, he disqualified the petitioners from being members of the Mandal Panchayat in question. This finding cannot be said to be perverse or not based on any evidence on record and, therefore, this

petition stands dismissed.

In W.Ps.Nos.131 16 to 13122 of 1987 the main grounds on which the impugned order was challenged are that the complaint was not filed within 24 hours as prescribed in law; that therefore there was no complaint in the eye of law which could have been entertained by the Chief Secretary; that the impugned order is violative of the principles of natural justice, since the petitioners were not heard; that there was no party direction to vote in favour of the 3rd respondent; that there was no material before the 1st respondent to come to the conclusion that the petitioners acted against the party direction; that no copy of the complaint was furnished to the petitioners even though they made a request for the same. The impugned order shows that the petitioners had voted against the whip of the political party (Indian National Congress) in the election to the office of the Pradhan and Upapradhan on 21-4-1987; that the whip was issued at the meeting of the party on 14-4-1987. The petitioners also did not deny that they had not voted for the complainant. As regards the fact that the complaint was submitted to the Secretary to the Mandal Panchayat, the Chief Secretary has found that no Secretary was posted to the Mandal Panchayat on the date of the complaint and, therefore, the complaint was in order. The stipulations regarding time for passing on the complaint and for deciding the complaint in Section 4 of the Act are not mandatory, but directory and they were stipulated to impress upon the authorities the urgency in dealing with such complaints and if any authority is necessary on this point, the decision of the Supreme Court in *The Bata Shoe Co. (P) Ltd. Vs. D.N. Ganguly and Others*, may be referred to. In the circumstances, the impugned order does not call for interference. Accordingly, these petitions stand dismissed

In Writ Petition No. 13844 of 1987, the petitioners have taken the contention that no complaint was made to the Secretary to the Mandal Panchayat and that there was no direction by the 3rd respondent to vote for the party candidate. The petitioners have challenged the "show cause" notice issued by the Chief Secretary. It is open to the petitioners to take the above contention before the Chief Secretary by filing proper objections. Hence, this petition stands dismissed and the petitioners are directed to appear before the Chief Secretary on 14-4-1988 without awaiting any further notice from him.

In Writ Petition No. 13527 of 1987, the petitioners have challenged the validity of the notice issued by the Secretary. It is open to the petitioners to file their objections before the Chief Secretary and take all contentions available to them. Accordingly, this petition stands dismissed and the petitioners are directed to appear before the Chief Secretary on 14-4-1988 without awaiting any further notice from him.

In Writ Petition No. 13855 of 1987, the contention taken by the petitioner is that he was not heard before the impugned order was made. The impugned order shows that the petitioner was served with the notice on 10-8-87; but he did not file his reply to the said notice. No material is produced before this Court to show

that the petitioner was duly served with the notice. Therefore, the impugned order is violative of the principles of natural justice. Accordingly, this petition is partly allowed and the impugned order is quashed. The petitioner shall appear before the Chief Secretary on 14-4-1988 without awaiting any further notice from him and file his objections to the impugned notice dated 10-8-1987.

In Writ Petitions Nos.11590 and 11591 of 1987, the complaint of the petitioners is that the Chief Secretary should have disposed of the complaint within 7 days from the date of receipt of the same. But the same was disposed of after 2 months from the date of receipt of the complaint. This contention is liable to be rejected in the view I have taken in Writ Petition Nos. 13116 to 13122 of 1987 above.

In Writ Petitions Nos. 11912 to 11915 of 1987, the impugned order is not a speaking order. Accordingly, these petitions are partly allowed and the impugned order is quashed. All contentions are left open. The petitioners shall appear before the Secretary on 14-4-1988 without awaiting any further notice from him and file their objections. The Chief Secretary shall dispose of the complaint in accordance with law.

In Writ Petition Nos. 11916 to 11920, 11592 to 11594 and 14400 of 1987, the impugned orders are not speaking orders. Accordingly, these petitions are partly allowed and the impugned orders are quashed. All contentions are left open. The petitioners shall appear before the Chief Secretary on 14-4-1988 without awaiting any further notice from him and file their objections. The Chief Secretary shall dispose of the complaints in accordance with law.

In Writ Petition No. 13647 of 1987 the petitioners have taken the contention that they neither received any direction from the political party before they were elected nor they were informed of the party decision. Therefore, they submitted that they have not violated the provisions of the Act. It is further contended by one of the petitioners, Shivananda, that he had informed the political party functionary about his inability to attend the meeting on 22-4-1987 because he was not well. But he did not receive any reply from the party intimating that his absence was not condoned. The impugned order does not deal with this aspect of the case and, therefore, it is not a speaking order. Therefore, this petition is partly allowed and the impugned order is quashed. The petitioners shall appear before the Chief Secretary on 14-4-1988 without awaiting any further notice from him and the Chief Secretary shall dispose of the complaint within 4 weeks from the date of receipt of this order after taking the explanation of the petitioners.

In Writ Petition Nos..13767 to 13772 of 1987, though the complaint was received by the Secretary on 27-4-1987, the same was disposed of on 3-9-1987. On that ground, the impugned order is not bad in law. But the impugned order is not a speaking order. Accordingly, these petitions are partly allowed and the impugned order is quashed. The petitioners are directed to appear before the Chief

Secretary on 14-4-1988 without awaiting any further notice from him and the Chief Secretary shall dispose of the complaint in accordance with law.

In Writ Petition No. 14916 of 1987, the grievance of the petitioners is that they were not heard by the Chief Secretary before the impugned order was made. This contention is well founded. The impugned order does not show that the petitioners were served with the notice of the proceedings before the Chief Secretary and they were heard in regard, to the complaint against them. Accordingly, this petition is partly allowed and the impugned order is quashed. The petitioners are directed to appear before the Chief Secretary on 14-4-1988 without awaiting any further notice from him.