

## Push button parliament—why India needs a non-partisan, recorded vote system

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*Abstract:* Decisions of national importance are made by Parliamentary voting. Yet Indian Members of Parliament (MPs) vote with a remarkable lack of freedom and accountability. The introduction of the Tenth Schedule in the Constitution has crippled free expression, since it provides that MPs voting against ‘any direction’ of their Party are liable to disqualification from the legislature. In addition, except for Constitutional amendments, Indian Parliamentary Procedure Rules do not require votes of MPs to be recorded unless the Speaker’s decision is contested in the House. The result is that voting in the House has become mechanical, controlled by Party politics and devoid of responsibility. This paper comments on a general theory of democratic accountability through the lens of Parliamentary voting. It suggests that the voting system adopted in the Parliament is an effective indicator to measure the level of accountability of its Members. In the context of India, this paper argues that the level of accountability will increase to a desirable extent only when there is adoption of a recorded system for every important House

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vote. Upon examination of India's record thus far (through the sample of the 14<sup>th</sup> Lok Sabha) it becomes evident that the level of divisions (recorded votes) is substantially lower than other countries. This leads the paper to probe, as to why that might be the case. Part II of the paper answers that question by examining the Tenth Schedule of the Constitution.

The paper scrutinizes the disproportionate influence of the Party in decision making in the Parliament. Apart from dealing with the inherent problem of the Tenth Schedule, this paper suggests two procedural changes to make parliamentary expression more meaningful. Firstly, the recording of all important votes within the Parliament and secondly, registering Party whips with the Minister of Parliamentary Affairs so that the voter knows the clear stand of every Parliamentary continuum. The focus of the paper is thus to bring back the attention of the legislators to their central function, which is deliberation on and the passage of legislation.

*Key words:* India, recorded votes, anti-defection, political parties, comparative constitutional law, parliamentary procedure, division, voice-votes, Tenth Schedule, accountability.

*Resumen:* La toma de decisiones de importancia nacional se hace por votación parlamentaria. Aún así, los Miembros del Parlamento de la India (MPs por sus siglas en inglés) votan con una falta notoria de libertad y responsabilidad. La introducción del Décimo Anexo en la Constitución ha lisiado la libre expresión, en la medida en la que establece que los MPs que voten en contra de cualquier dirección de su Partido, son susceptibles de ser descalificados de la legislatura. Adicionalmente, excepto por las enmiendas a la Constitución, las Reglas de Procedimiento Parlamentario de la India no requieren que los votos de los MPs sean registrados, a menos de que la decisión del Orador sea disputada en la Cámara. El resultado es que la votación en la Cámara se ha convertido en mecánica, controlada por las políticas partidarias, y desprovista de responsabilidad. Este trabajo se una teoría general de la responsabilidad democrática a través del una mirada a la votación parlamentaria. Sugiere que el sistema de votación adoptado en el Parlamento es un indicador efectivo para medir el nivel de responsabilidad de sus Miembros. En el contexto de la India, este trabajo argumenta que el nivel de responsabilidad incrementará a un nivel deseable, solo cuando se de la adopción de un sistema registrado para cada voto importante en la Cámara. En la revisión del registro en la India hasta ahora (a través de la muestra de la 14<sup>a</sup> Lok Sabha) se hace evidente que el nivel de divisiones (votos registrados) es sustancialmente menor que en

otros países. Esto lleva a que este artículo demuestre el por qué ese puede ser el caso. La Parte II de este artículo responde a esa pregunta examinando el Décimo Anexo de la Constitución.

Este escrito examina la influencia desproporcionada del Partido en la toma de decisiones en el Parlamento. Además de tratar con el problema inherente del Décimo Anexo, este escrito sugiere dos cambios procesales para hacer más significativa la expresión parlamentaria. En primer lugar, el registro de todos los votos importantes dentro del Parlamento y en segundo lugar, el registro de las bancadas del Partido (Party whips) con el Ministro de Asuntos Parlamentarios, para que el votante conozca la postura clara de cada bando/grupo (continuum) Parlamentario. El enfoque de este artículo es, por ende, retomar la atención de los legisladores hacia su función central, que es la deliberación y la aprobación de la legislación.

*Palabras clave:* India, grabación de votos, anti-deserción, partidos políticos, derecho constitucional comparado, procedimiento parlamentario, división, votos a viva voz, Tenth Schedule, responsabilidad.

*“It is not only what we do but also what we do not do for which we are accountable.”*  
Moliere<sup>1</sup>

## I. Introduction

In India’s chequered political history, most significant decisions have stemmed from voting in the Parliament.<sup>2</sup> Yet there is scant record of how its Members of Parliament (MPs) vote, how often they vote and most impor-

<sup>1</sup> Quote by Jean Baptiste Moliere, in Tryon Edwards, *A Dictionary of Thoughts: Being a Cyclopaedia of Laconic Quotations from the Best Authors of the World, Both Ancient and Modern* 528 (F.B. Dickerson Co. 1908).

<sup>2</sup> See e.g., P.V. Narsimha Rao v. State through CBI (1998) 4 S.C.C. 626 (India) (famously known as the JMM Bribery case); R. Suryamurthy, *Cash for Questions*, *The Tribune*, December 12, 2008, <http://www.tribuneindia.com/2005/20051213/main1.htm>; Passage of Acts such as the Information Technology (Amendment) Act, 2006, consideration of bills such as the National Investigating Agency Bill, 2008, The Companies Bill, 2009, etc. For a complete list of bills considered and passed in the Monsoon Session 2008 of the Parliament, see [http://www.prsindia.org/index.php?name=Sections&id=5&parent\\_category=&category=1&action=bill\\_details&bill\\_id=544](http://www.prsindia.org/index.php?name=Sections&id=5&parent_category=&category=1&action=bill_details&bill_id=544).

tantly, their stand on key issues. As sovereign citizens, it is every Indian's right to know how her elected representatives perform. Instances where the Lok Sabha (lower house of the Parliament) passed eight bills in a record seventeen minutes<sup>3</sup> run havoc over principles of a parliamentary democracy and do little for accountability. An elected representative must have absolute freedom of expression. The Indian Constitution bestows this freedom more compellingly upon legislators than ordinary citizens.<sup>4</sup>

In a 2006 study conducted, on the Indian Parliament's performance as an 'institution of accountability', it was observed that the Parliament has lost its erstwhile majesty on account of its disorderly functioning and factors both within and outside the Parliament.<sup>5</sup> The study observed that a cause of this lacklustre performance was the intermeddling of too many political parties and the gap between the demands of modern legislation and the capacity of MPs.<sup>6</sup> The most alarming results of the research however were that despite existing accountability mechanisms, parties wielded power over MPs which inhibited their performance and MPs did not view legislating or 'policy-making' as their primary function at all, instead they spent a lot time in their constituency even when Parliament was in session.<sup>7</sup> The study observes:

“The fact that MPs often consider their primary function as a go-between says something about how the function of representatives is seen in Indian politics. MPs are not often seen as lawmakers; most of their constituents are unaware of the bills they are associated with and they are seldom judged on policy accomplishments.”<sup>8</sup>

<sup>3</sup> *The Parliament passes 8 Bills in 17 Minutes*, January 3, 2009, <http://www.merineews.com/catFull.jsp?articleID=154762>

<sup>4</sup> INDIA CONST. art 105 and art 19 cl 1 sub cl a. See *M.S.M. Sharma v. S.K. Sinha* AIR 1959 SC 395 and the *Keshav Singh Presidential Reference* (1965) 1 SCR 413.

<sup>5</sup> Devesh Kapur & Pratap Bhanu Mehta, *The Indian Parliament as an Institution of Accountability*, Democracy, Governance and Human Rights Programme, (United Nations Research Institute for Social Development, Paper n.º 23 2006) available at [http://www.unrisd.org/80256B3C005BCCF9/\(httpAuxPages\)/8E6FC72D6B546696C1257123002FCCEB/\\$file/KapMeht.pdf](http://www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/8E6FC72D6B546696C1257123002FCCEB/$file/KapMeht.pdf)

<sup>6</sup> *Id.* at 30.

<sup>7</sup> *Id.* at 8, 19.

<sup>8</sup> *Id.* at 19.

A telling example of the lack of accountability in the Indian Parliament is discernible from observing the fourteenth Lok Sabha. In a span of five years from 2004–2008 there have been only twenty instances of divisions (recorded votes) in the House.<sup>9</sup> Contrast this record with the House of Commons in the United Kingdom (UK), where in the same period, there were 1060 instances of divisions.<sup>10</sup> Barring these twenty instances, there is no record of how Indian legislators voted. In the UK on the other hand recorded divisions have taken place on almost every important motion. Even among the twenty divisions in the fourteenth Lok Sabha, there were eight constitutional amendments and one no-confidence motion where a division is compulsory under the Constitution and the rules of parliamentary procedure. This means that there were effectively only eleven instances of divisions.

It follows from the proposition of accountability that MPs voting in the House in favour of a Bill or a motion should do so devoid of any Party control. As a representative of her constituency, an MP is responsible to her electorate and not to her Party, since a Party is nothing but an “aggregation of individuals”.<sup>11</sup> In a proportional representation list system, admittedly the Party has a greater stronghold since it determines the place of the MP on the list and consequently voters vote for the Party more than the individual MP.<sup>12</sup> But in the First Past the Post System of election followed in India, voters choose candidates based on their individual qualities and Party affiliation is just one of the many factors that guide their decision. MPs are thus, in a sense, independent of the identity of the Party, when standing for elections. Independent candidates who have no Party patronage are also elected. At any rate, once an MP is voted in, she is a representative of the entire electorate regardless of whether given individuals voted for her or her Party.<sup>13</sup>

When a Party no longer controls an MP, a ‘de-whipped’ legislator is seen to perform her functions free of extraneous factors like political dyna-

<sup>9</sup> See *Appendix 1*.

<sup>10</sup> *Number of House of Commons Divisions*, Parliamentary Information List, Department of Information Services. SN/PC/0467, July 22, 2010, available at <http://www.parliament.uk/briefingpapers/commons/lib/research/briefings/snpc-04670.pdf>

<sup>11</sup> Adam Tomkins, *Our Republican Constitution* 138 (2005).

<sup>12</sup> Richard S. Katz, *Democracy and Elections*, 207 (1997).

<sup>13</sup> In *David v. Akers*, 549 F.2d 120, 124–25 (9th Cir. 1977), the United States Ninth Circuit Court observed that the legislator did not represent a Party but rather all the voters of the area.

mics and Party position. The legislator then acts as a legislative representative of her constituency which is a true manifestation of her constitutional position.

Government control through the ruling Party over the decision of the MPs is in violation of the principle of separation of powers, a basic feature of the Indian Constitution. Inherent to this principle is that there is protection of necessary autonomy of the House, its members and the executive.<sup>14</sup>

Against this background, it appears that the introduction of the Tenth Schedule<sup>15</sup> in the Constitution has brought about an artificial lever of control over Parliamentary free speech. An MP who votes contrary to 'any direction' issued by the Party is liable to disqualification from the legislature.<sup>16</sup> Apart from unfairly constraining free speech, the unfortunate consequence of this law is the degeneration in the quality of House debate. The number of disruptions has increased and there has been drastic shrinking in the total time for which the Lok Sabha sits.<sup>17</sup>

This paper comments on a general theory of democratic accountability through the lens of Parliamentary voting. It suggests that the voting system adopted in the Parliament is an effective indicator to measure the level of accountability of its Members. In the context of India, this paper argues that the level of accountability will increase to a desirable extent only when there is adoption of a recorded system for every important House vote.

Part I of this paper fleshes out the merits of the recorded vote system. It examines how other jurisdictions have successfully adopted it and suggests that it might be a favourable route for India's multi-Party system.

Upon examination of India's record thus far (through the sample of the 14<sup>th</sup> Lok Sabha) it becomes evident that the level of divisions (recorded votes) is substantially lower than other countries. This leads the paper to probe, as to why that might be the case. Part II of the paper answers that question by examining the Tenth Schedule of the Constitution.

<sup>14</sup> Ross Carter, *Parliament: Caucuses, Article 9, and Open Government - If Not, Why Not?*, 18 NZULR 99.

<sup>15</sup> INDIA CONST., Tenth Schedule - Provision as to Disqualification on Grounds of Defection.

<sup>16</sup> Para 2 sub-para (1) clause (b) of the Tenth Schedule.

<sup>17</sup> For a record of the fall in the number of Lok Sabha sessions see the Resume of Work done by the Lok Sabha, TO 75 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 LS 1962-2009, Lok Sabha Secretariat, New Delhi.

The first part of the paper thus argues that voting within the four walls of the House must be recorded and open for the public examination. The paper also stresses on the importance of how recording of votes will reflect the continued attendance of MPs during sessions. In this context, the paper suggests that within the House the procedure for secret ballot should be abolished. Through international examples, it points out that a record of votes taken in the House ensures transparency and enables the electorate to make informed decisions about the performance of its legislators. It emphasizes the proposition that as constitutionally elected representatives of the people, it is the duty of MPs to vote based on their judgment, knowledge and conscience, free of Party directives which often have little to do with the issue at hand. It suggests that toeing the Party line undermines the significance of debates and makes democracy a mere number game. In doing that, it assails the constitutional validity of the Tenth Schedule.<sup>18</sup>

Part II argues that the system of recorded votes may not have been effectively adopted in India because of the existence of the Tenth Schedule of the Constitution. It contends that since the Tenth Schedule penalizes voting against Party line there seems to be no necessity for adopting a recorded vote system, since Party-line voting assures pre-decided numbers. This part also examines arguments both for and against Party line voting.

The paper scrutinizes the disproportionate influence of the Party in decision making in the Parliament. It questions the role of the Party and its legitimate place in the scheme of parliamentary decision making. It studies the role of the 'Party whip' and its significance over free voting. It takes a look at the relevant anti-defection orders passed by the Speaker and how the law has evolved thus far in comparison with other jurisdictions. It also looks at how free voting has fared across international jurisdictions.

Apart from dealing with the inherent problem of the Tenth Schedule, this paper suggests two procedural changes to make parliamentary expression more meaningful. Firstly, the recording of all important votes within the Parliament and secondly, registering Party whips with the Minister of Parliamentary Affairs so that the voter knows the clear stand of every Parliamentary continuum.

The focus of the paper is thus to bring back the attention of the legislators to their central function, which is deliberation on and the passage of legislation. This paper has used examples from the Lok Sabha to make its

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<sup>18</sup> INDIA CONST., Tenth Schedule-Provision as to Disqualification on Grounds of Defection.

case. The arguments raised here however apply equally to the Rajya Sabha (upper house) and state legislative assemblies.

It may be noted that once the position of the Tenth Schedule is tied to the problem of accountability, a very complex question of evaluating India's choice of partisan voting opens up. It is beyond the scope of this paper to exhaustively examine the general role of political Parties in India's constitutional democracy. It therefore examines the place of political Parties *within the narrow prism of voting in the House*. After appraising the *function and application* of the Tenth schedule in India's context and studying briefly the practice in other jurisdictions, the paper comes out in favour of non-partisan voting.

## Part I

### II. Voting in the House

The importance of parliamentary procedure cannot be underestimated. This procedure determines the ultimate destiny of the laws of the country. It is significant not just to Parliamentarians but also to citizens. M.P. Jain has observed that Parliamentary procedures governs and defines the content of legislation and thus must interest both citizens and legislators.<sup>19</sup>

#### A. What happened in the 14<sup>th</sup> Lok Sabha—How much do we know and do we know much?

In order to realize the exact import of the level of accountability within the House, the fourteenth Lok Sabha was taken as a sample and a record of all instances of divisions were documented.

*Appendix 1* is a compilation of the record of divisions of this House. It shows mere 20 instances of divisions for 323 Bills that were considered which is a voting record of only 6%.<sup>20</sup> A closer look at the statistics reveals that only 5 out of these 20 instances were motions concerning Bills. There were 8 constitutional amendments and the rest were miscellaneous motions including a no-confidence motion for which a division is mandatory. This means that in reality a constituent would know how an MP voted only in

<sup>19</sup> 2, M.P. Jain, *Indian Constitutional Law*, App 1 (6<sup>th</sup> Ed, 2010).

<sup>20</sup> For a complete list of the Bills passed, pending and those that lapsed in the 14<sup>th</sup> Lok Sabha, see [http://www.prsindia.org/docs/latest/1236071950\\_Summary\\_fourteenth\\_Loksabha.pdf](http://www.prsindia.org/docs/latest/1236071950_Summary_fourteenth_Loksabha.pdf)

about 1.5% of the total number of Bills passed. And this is merely statistics for votes cast in drafting Bills. Parliamentarians vote on every motion and amendment, several of them of such vital importance they can determine the fate of a given piece of legislation. And yet Indian voters have almost no record of their presence in the House, let alone their stand on that particular piece of legislation.

This empirical study points out that an Indian voter has little knowledge of what her MP is doing once the MP enters Parliament. While televising debates may have seemed like a far-reaching change for India (with a T.V. channel 'Lok Sabha T.V.' dedicated to showing Parliamentary debates), it seems meaningless when there is no account of how

MPs *act upon* those speeches through their votes.

But was the record of divisions always so low? An analysis of the record of divisions from the third Lok Sabha in the 1960's to the fourteenth Lok Sabha<sup>21</sup> until 2009 shows that the incidents of division have reduced to a great extent *since the introduction of the Tenth Schedule* by the fifty-second amendment to the Constitution, in 1985.<sup>22</sup> The Tenth Schedule of the Constitution, which disqualifies an MP if she votes against 'any direction' of her Party seems to hit at the root of parliamentary accountability. Prior to 1985, voting within the House against the direction of one's Party could not lead to expulsion from the legislature. It is thus contended that the number of divisions (recorded votes) conducted was many times greater. For example, in the 5<sup>th</sup> Lok Sabha (1971-1976) there were a total 313 instances of divisions in the House.<sup>23</sup> In the 3<sup>rd</sup> Lok Sabha there were 330 instances of divisions while in the 4<sup>th</sup> there were 294 instances.<sup>24</sup> These statistics reveal that when not threatened by expulsion, the House tended to record its vote more often just as it did not hesitate in voting against its own Party when required. For convenience and accountability, we may have moved from division slips to Automatic Voting Machines but the numbers detailed in the Table below<sup>25</sup>, tell a depressing tale of dismal legislative accountability:

<sup>21</sup> The records for the 1<sup>st</sup> and the 2<sup>nd</sup> Lok Sabha are not available in the Parliament Library archives.

<sup>22</sup> Discussed *infra*.

<sup>23</sup> Resume of Work done by the Lok Sabha, To n.º 75- Vol II-XVII, 5<sup>th</sup> Lok Sabha, 1971-1976.

<sup>24</sup> Resume of Work done by the Lok Sabha, 3<sup>rd</sup> and, 4<sup>th</sup> Lok Sabha, 1962-67 and 1967-70.

<sup>25</sup> The data in the table is based on information gathered from the Resume of Work done

**Table: Divisions in the Lok Sabha (3<sup>rd</sup> to 14<sup>th</sup>)<sup>26</sup>**

<i>Sr. No.</i>	<i>Year</i>	<i>Lok Sabha</i>	<i>Divisions</i>	<i>Comments if any.</i>
1	1962-67	Third	330	
2	1967-70	Fourth	294	
3	1971-76	Fifth	313	
4	1977-79	Sixth	111*	One number in the records was illegible and this figure may vary by about 10. This Lok Sabha had a life span of only 30 months.
5	1980-84	Seventh	198	
POST INTRODUCTION OF TENTH SCHEDULE				
6	1985-89	Eighth	62	
7	1989-91	Ninth	38	This Lok Sabha was in session for three years.
8	1991-96	Tenth	96	This Lok Sabha was in session for six years.
9	1996-98	Eleventh	2*	There is no data available from March 1996-February 1997. This number therefore does not reflect a complete picture.
10	1998-99	Twelfth	4	This Lok Sabha was in session for a little over a year.
11	1999-04	Thirteenth	74	This Lok Sabha lasted for the full term of five years, though the elections were called a bit earlier.
12	2004-09	Fourteenth	20	

The steady decline in the number of divisions conducted in apparent when the Lok Sabha sessions are divided into a pre and post 10<sup>th</sup> Schedule era.

The Tenth Schedule has introduced a presumption that all the members are voting in line with their Party's directive and thus the demand for divisions by the MPs has also swiftly fallen. Voting in the Parliament could well be described as a number game and since the numbers are known, MPs feel no need to ascertain them at every instance. The direct impact of this mechanical way of passing laws is that it has made debate, discussion and opposition quite meaningless. This table is an example of the imminent

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by the Lok Sabha, TO 75 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 LS 1962-2009, Lok Sabha Secretariat, New Delhi.

<sup>26</sup> Incomplete data, clarifications have been indicated in the last column.

danger of loss of accountability. It brings out the compelling need for recording votes in the House.

It may be useful for the sake of this proposal to understand and contrast the voting procedures in the Parliaments of India, USA and the UK. It becomes clear that the overall procedure in all three jurisdictions is quite similar. The difference of course being that in comparison to India, both the UK and USA have a significantly larger number of recorded votes. If India decides to abolish the Tenth Schedule and Party-line voting however, it will be rather effortless to transition to more divisions without drastically changing the parliamentary procedural law.

## B. Voting Procedures in the Indian Parliament

All decisions in the House are taken by a simple majority of those present and voting or a special majority for constitutional amendments.<sup>27</sup> A decision of the House is made by moving a motion and members vote for or against the decision. This method of arriving at a decision is known as ‘division’.<sup>28</sup> It is so called because on the conclusion of a debate on the motion, the Speaker puts the question to the House and invites members in favour of the motion to say “Aye” and those against it to say “No”. The House therefore stands ‘divided’ over the question. After determining the decision of the majority based on which side sounds more forceful, the Speaker declares, “I think the Ayes/Noes have it”. This method is commonly known as a ‘voice vote’, since the Speaker’s decision is merely on the basis of the voice carried to the Chair.<sup>29</sup> In the Indian Parliament, voting is generally carried out by ‘voice vote’. Rule 367 of the Parliament’s Rules of Procedure further provides, if the decision of the Speaker is not challenged, that he declare it twice. If the decision of the Speaker is challenged, the Speaker asks the lobbies to be cleared, repeats the question and the procedure and declares the result again. In this case, just as in a voice vote, the names of the members voting for or against a motion are not recorded. In case the Speaker believes that a division is unnecessarily claimed, he may just ask members in favour to stand

<sup>27</sup> INDIA CONST, art 101 and art 368.

<sup>28</sup> Subhash Kashyap, *Parliamentary Procedure-Law, Privileges, Practice And Precedents*, 1119 (2d ed. 2006).

<sup>29</sup> Rules of Procedure and Conduct of Business in the Lok Sabha/Rajya Sabha. available at <http://parliamentofindia.nic.in/lr/rules/rules.html>

up and then members against the motion to stand up, then take a physical count of the members and declare the result. In such a case too, the names of the members are not recorded.<sup>30</sup>

If the opinion of the Speaker is challenged again he directs the votes to be recorded either by the Automatic Voting Machine (AVM) or through division slips or by members going into opposite lobbies. Voting has to be by division whenever the motion has to be carried by a two-thirds majority.<sup>31</sup> There are a host of provisions of the Constitution which require to be voted by a special majority such as constitutional amendments, impeachment of the President, removal of a Supreme Court judge, etc.<sup>32</sup> Barring these situations, a division vote is not necessary.

A division in the House is therefore, the only occasion to learn about the stand an MP has taken on a Bill, constitutional amendment or no-confidence motion.

### C. Secret Ballot

The only constitutionally recognized provision where a vote is free of control is the secret ballot provision for electing the President and the Vice President.<sup>33</sup> The rationale of a secret ballot for Presidential and Vice-Presidential elections is that the members of the House replicate the electorate outside the House and are thus not performing a legislative function.

While the secret ballot principle is a constitutional mandate for the election of the President and the Vice President, it is only a statutory right of the ordinary voter in an election. Section 94 of the Representation of People's Act, 1951 says that "no witness or other person shall be required to state for whom he has voted in an election." The Supreme Court has however, ruled that secrecy of ballot is a privilege of the voter and she has a right to voluntarily disclose it. On an election petition where the victory of a

<sup>30</sup> Rule 367 Procedure Regarding Divisions in Rules of Procedure and Conduct of Business in the Lok Sabha/ Rajya Sabha available at <http://parliamentofindia.nic.in/lr/rules/rulep27.html>

<sup>31</sup> Rule 158 read with Rule 367, 'Voting by Division' in Rules of Procedure and Conduct of Business in Lok Sabha/Rajya Sabha.

<sup>32</sup> Under the INDIA CONST there is a requirement of a two third majority as per arts 368, 61, 124(4), 217(1) (b), 148(1), 324(5), 67(b), 90(c), 312 and 249.

<sup>33</sup> INDIA CONST, art 55-Manner of Election of the President, art 66 - Manner of Election of the Vice President.

candidate is in question, a voter may be called to court as a witness and while a court of law or any other person cannot compel her to disclose her vote, she will not incur any penalty if she chooses to do so. The Supreme Court observed that, “Witnesses so produced...would be at liberty to disclose in the court as to in whose favour he had exercised his right of franchise. It is therefore evident that the question as to whether a witness will exercise his right/privilege conferred in terms of Section 94 of the Act is a matter of volition.”<sup>34</sup>

In the UK, Schedule 1 Section 9 of the Representation of People Act, 1983 as amended in 2000 provides that every elector shall have a number which will help trace her vote in case of an allegation of fraud.<sup>35</sup> The tracing of votes is enabled with the permission of an election court when an election is challenged in court. While in principle the secrecy of the ballot may not be violated, the ballot is not confidential.

Another point that case law over secret ballot has propounded is that this privilege of the voter has to be read harmoniously with the sanctity of the electoral process. The Court in *A. Neelalohithadasan Nadar v. George Mascrene and Others*<sup>36</sup> held that Section 94 of the Representation of People’s Act, 1953 cannot be pressed into service to suppress a wrong from being exposed and to protect a fraud in the election process.

Viewing the system from the prism of the electorate versus the elected, one may argue that even the universally enshrined right of secret ballot may have exceptions on certain occasions. On the other hand the votes of representatives which ought to be open are protected from public scrutiny by having no form of records whatsoever. This also brings in the implication of fraud within the system. If MPs for instance fraudulently vote one way or the other (for bribes/other political favours) there would be no way of investigating this information. It is true that upon advocating non-partisan voting, inquiring into the motive of the voting decision of the MP would be beyond the scope of a Court’s domain. Yet a record of votes would help exhibit patterns of fraud in cases of a serious nature. If nothing else, they would contribute towards creating a device to examine how votes of MPs

<sup>34</sup> *Nayini Narsimha Reddy v. Dr. K Laxman & Otrs* 2006 (5) S.C.C. 239; See also, *S. Raghbir Singh Gill v. S. Gurcharan Singh Tohra and Others* (1980) Supp. S.C.C. 53.

<sup>35</sup> The Representation of the People’s Act, 2000, Sch 1 § 9 (3) (Eng.): *A person’s electoral number is such number (with or without any letters) as is for the time being allocated by the registration officer to that person as his electoral number for the purposes of the register in question.*

<sup>36</sup> (1994) Supp. (2) S.C.C. 619.

appear to have swayed during a given session and this can help voters in evaluating their MP and in making re-election decisions.

The principle behind the use of secret ballot in regular elections is evident. The shield afforded to citizens may be justified, since they are susceptible to inducements or threats from which they may not be able to protect themselves. Despite the fact that protecting the sanctity of a vote outside the House is of a much greater consequence than within the House, the Court has interpreted that a voter is free to disclose it. Transposing the same principle within the House, even with regard to Presidential and Vice Presidential elections, there should not be any need for a secret ballot. If there is any allegation of threat of fear or favour, the disclosure of votes will help trace the perpetrators.

The election of the President is held by an electoral college which consists of elected members of both House of Parliament and State Legislative Assemblies. The Vice-President is elected by the members of an electoral college consisting of the members of both Houses of Parliament. These elections indirectly express the will of the people through their representatives and are not considered legislative activities of the members forming the electoral-college. Similarly, election by members of the State Legislative assemblies to the Rajya Sabha, though through an open ballot system is not a legislative function of the State legislatures.<sup>37</sup>

As in the case of voting for the Lok Sabha and the State Legislatures, voting in the election of the President and the Vice President as well as for the Rajya Sabha is not compulsory and the Election Commission has clarified that voting for the Rajya Sabha does not fall within the purview of the Tenth Schedule.<sup>38</sup> The Election Commission has applied the same analogy for the Presidential and Vice Presidential elections, clarifying that political parties cannot issue any direction or whip to their members to vote in a particular manner or not to vote at these elections.<sup>39</sup> Leaving legislators with no free choice is tantamount to the offence of undue influence within the meaning of Section 171C of the Indian Penal Code.

<sup>37</sup> See Pashupati Nath Sukul v. Nem Chandra Jain, (1984) 2 S.C.C. 404.

<sup>38</sup> Election Commission of India, Press Note-*Presidential Election, 2007—Right to Vote or not to Vote, Clarification regarding*, July 17, 2007, RM/AMA- 170707 Press Note, available at [http://www.hec-india.com/downloads/election\\_commission\\_press\\_note\\_clarification\\_regarding\\_right\\_to\\_vote\\_in\\_presidential\\_election.pdf](http://www.hec-india.com/downloads/election_commission_press_note_clarification_regarding_right_to_vote_in_presidential_election.pdf).

<sup>39</sup> *Id.*

If voting by the electoral college in the case of Presidential, Vice Presidential and Rajya Sabha elections is not part of the House proceedings and so non-legislative business, it follows that there is every reason to make such voting transparent so that the constituency is aware how their representatives are utilising their delegated powers (in this case delegated directly from the people). One may also argue that in comparatively non-controversial scenarios of voting for nominal heads of the State, legislators have complete freedom, making interference with the same an offence. On the other hand when it comes to grand decisions of national importance, political Parties can constrict and refrain as they like with impunity.

Some may argue that removing the method of secret balloting for Presidential and Vice-Presidential elections may subject legislators to public fury or threats to vote a certain way, in effect ruining their volition. It is however important to note that factors that influence actions in a general election may have no relevance within legislative chambers. The Presidential and Vice-Presidential elections as titular heads do not hold the kind of leverage that votes for candidates in general elections do. It is therefore necessary to draw a distinction between voting in general elections and voting in the House. In fact once the provision of secret ballot for Presidential and Vice Presidential elections is removed, greater transparency will allow the public to understand what factors played out in the ultimate result since the whole nation will know which MP voted for which Presidential or Vice Presidential candidate. Avoiding fraudulent conduct in the Parliament and maintaining the 'purity' of its functions is as important as it is for general elections and therefore, deserves to be recorded.

## **D. Parliamentary Voting-International Practice**

### **a) Procedure in the United Kingdom**

#### ***i. Division***

Since India has evolved its parliamentary practice from the UK, voting in the House of Commons is similar to how the Indian Parliament votes.<sup>40</sup>

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<sup>40</sup> Factsheet P9, *Procedure Series, House of Commons Information Office, Divisions*, August 2010, available at <http://www.parliament.uk/documents/upload/P09.pdf>

Voting in the House of Commons is by way of division as well.<sup>41</sup> Historically, the Speaker always assessed the decision of the House. A count was taken only when there was opposition. The earlier practice was that one side went to the lobby/ante room while the others remained seated. A report of the Select Committee on Divisions<sup>42</sup> later recommended that the House be cleared and the members be sent to two separate lobbies from where tellers appointed at the entrance of each lobby would count the number of the members while the clerks noted their names down. These lists of names would be then brought forth by the tellers and deposited with the Speaker who would announce the result. These recommendations were adopted and the procedure of clearing the division lobbies began.

Today, the House of Commons procedure of division is governed by Standing Orders.<sup>43</sup> A motion is put to voice vote but if there are shouts of dissent, a division is taken. UK does not use the Automatic Voting Machine<sup>44</sup> and if a division is demanded, members clear the House and move to the division lobbies where tellers take a count of the members. Once the division list is sent to the Speaker, he announces whether the ‘ayes’ or the ‘noes’ have it. The division list made is sent to Hansard for printing and is available for public viewing on the House of Commons website.

Since the information regarding the number of divisions is publicly available in the UK, one can easily get an account of the number of divisions conducted.<sup>45</sup> In 2009-10, there were 135 divisions<sup>46</sup> and between 2004 and 2008 a total of 1060 divisions took place.<sup>47</sup>

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 2, quoting the Select Committee on Divisions of Session 1835 (HC 66).

<sup>43</sup> Standing Orders 38-41 in Standing Orders of the House of Commons, (2009), available at <http://www.publications.parliament.uk/pa/cm200809/cmstords/2/2.pdf>

<sup>44</sup> Although the introduction of electronic voting was debated, “*no single alternative gained support*”. It is also believed that division lobbies help members debate and discuss their views with each other. See, *Why aren't divisions electronic?*, available at <http://www.parliament.uk/about/how/business/divisions.cfm>

<sup>45</sup> Division lists of the current session are available at [http://services.parliament.uk/Lords-DivisionsAnalysis/session/2010\\_11](http://services.parliament.uk/Lords-DivisionsAnalysis/session/2010_11)

<sup>46</sup> *Supra* note 9.

<sup>47</sup> Number of House of Commons Divisions, Parliamentary Information List, SN/PC/04670, March 24, 2009, Department of Information Services available at <http://www.parliament.uk/commons/lib/research/briefings/snpc-04670.pdf>

An important provision of the Standing Orders is that a member is not obliged to vote (Order 38(2)). Unlike in India, where a member must vote according to the direction of her Party<sup>48</sup>, in the UK even an abstention from voting is legally recognized and does not carry any sanction. Although abstentions are common in India as well, an abstention in contravention to Party directions is penalized and there is no provision in the Lok Sabha rules of procedure, which says that a member is not obliged to vote.

Further in the UK, organizations such as the Publicwhip allow people to access detailed records of how Members have voted during a division.<sup>49</sup> The House of Commons also produces a paper on voting participation rates to assess the individual member's performance in a given session.<sup>50</sup>

## ii. *Deferred Division*

In the UK not all divisions can be conducted on the same business day and a novel procedure of deferred divisions has been introduced to save time. The Modernization committee of the House in its second report had suggested introducing this procedure.<sup>51</sup> According to this procedure, divisions that would have ordinarily taken place at the end of a work day (known as the “moment of interruption”<sup>52</sup>) are deferred to the following Wednesday after noon.<sup>53</sup> Motions on statutory instruments and EU documents are subject to deferred divisions and matters that have been subject to a deferred division, are enlisted and provided to the members for their perusal.<sup>54</sup>

<sup>48</sup> INDIA CONST, Sch 10, Para 2 (1) (b).

<sup>49</sup> See e.g. The Public Whip, available at <http://www.publicwhip.org.uk>

<sup>50</sup> Factsheet P9, Procedure Series, House of Commons Information Office, Divisions, Revised, August 2010, at 5, available at <http://www.parliament.uk/documents/commons-information-office/p09.pdf> [hereinafter Factsheet P9]

<sup>51</sup> Modernisation Committee, *Programming of legislation and timing of votes*, July 6 2000, HC 589, para 45. <http://www.publications.parliament.uk/pa/cm199900/cmsselect/cmmodern/589/58902.htm> as cited in Factsheet P9, *id.*

<sup>52</sup> The “*moment of interruption*” is the name given to the time which marks the end of the main business of the House. These times have been designated at 10 p.m. on Mondays and Tuesdays; 7 p.m. on Wednesday; and 6 p.m. on Thursday as cited in Factsheet P9 *supra* note 49.

<sup>53</sup> Order 41A (3) of the Standing Orders of the House of Commons *supra* note 42.

<sup>54</sup> Factsheet P9 *supra* note 49 at 7.

Procedures such as the deferred division have been introduced in the House of Commons to make divisions more convenient. Having a list of divisions and providing a record of votes made by MPs makes the level of accountability in the UK much greater than in India.

## **b) Procedure in the United States**

In the United States (US) Congress, four methods are followed for voting. The first two are those in which votes are not recorded while in the two others votes are recorded. It may be noted that the term ‘division’ has a slightly different connotation in the context of US House practice.

### ***i. Unrecorded Method***

The unrecorded method comprises of the Voice Vote and the Division (Standing) Vote. In the Voice Vote method, members vote by shouting ‘aye’ or ‘nay’ and the decision is made on the basis of which side sounds more vociferous.<sup>55</sup> In a Division (Standing) Vote, members stand up either for/against a given motion.<sup>56</sup> If the votes are not recorded, it is only those votes for which an official record is not required.<sup>57</sup>

### ***ii. Recorded Method***

This comprises the Yea and Nay Votes and the Recorded Votes. The standard constitutional Article 1 Section 5 method of voting is the Yea and Nay method, which requires the support of a fifth of the members present<sup>58</sup> or which is ordered automatically when a member objects to a pending vote on the grounds of a lack of quorum.<sup>59</sup> An electronic device takes this vote. Yeas and Nays are required for certain provisions like passing of certain specific

<sup>55</sup> Rule I, Clause 6 of the House Practice, 108th Congress, 1st Session, A Guide to the Rules, Precedents and Procedures of the House, From the U.S. Government Printing Office via GPO Access, DOCID: hp\_txt-21, 909-936 available at [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_house\\_practice&docid=hp-58](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_practice&docid=hp-58)

<sup>56</sup> § 1, Rule XX, Clause 1(a) *Id.*, at 910.

<sup>57</sup> § 9 *supra* note 54, at 916.

<sup>58</sup> Votes of Record § 12 Yea and Nay votes; recorded votes, *supra* note 54 at 918.

<sup>59</sup> Rule 20, Clause 6, Votes of Record § 12 Yea and Nay votes; recorded votes, *supra* note 54 at 918.

bills in which case this is the only method by which a vote may be recorded. These include questions relating to the final passage of appropriation bills, budget resolutions, bills that propose to increase Federal income tax rates or related conference reports which require yeas and nays.<sup>60</sup> Any Bill passed over the Presidential veto also requires the yeas and nays method.<sup>61</sup> A yeas and nays vote may also be required for statutory provisions.<sup>62</sup> The most important provision of this method of voting apart from the wide array of situations for which it is used is that a Congressional record of how a member has voted is available in the House Journal.<sup>63</sup> Recorded votes require one-fifth of a quorum but must yield in when there is a demand for yeas and nays since the latter has a constitutional mandate.<sup>64</sup>

Generally votes are taken in voice and on demand by division. If a demand is made votes may be recorded and such a demand may be made either before or after a division. If a member is dissatisfied by a division vote (that is the Speaker's physically counting the votes for or against a motion) he may demand a record vote.

A combination of all these methods may be used. Generally, the Chair first puts a question to voice vote.<sup>65</sup> Thereafter, either upon the initiation of the Chair or Member, a division vote is taken; a record vote may be demanded prior to or after a division.<sup>66</sup>

Though rarely used, House Practice, Rule XX also provides for two other methods-Roll Call Votes and Votes by Tellers with Clerks. The former requires members to respond orally as the Clerk calls the roll in alphabetical order.<sup>67</sup> In the latter method, members fill and sign a vote tally card and submit it to a designated clerk teller.<sup>68</sup>

In the United States as in the United Kingdom, a member cannot be ordered to vote by the Speaker or anyone else. Although Rule III, Clause 1

<sup>60</sup> Rule XX, Clause 10, § 1, *supra* note 54 at 911.

<sup>61</sup> The Constitution of the United States, Article I, Section 7.

<sup>62</sup> See for example, 50 USC Sec. 1545 (War Powers Resolution); 50 USC Sec 1622 (Termination of National Emergency), § 13, *supra* note 54 at 921.

<sup>63</sup> Manual, § 75, § 16, *supra* note 54 at 924.

<sup>64</sup> Rule XX, Clause 1(b), § 1, *supra* note 54 at 910.

<sup>65</sup> Rule I, clause 6, § 1, *supra* note 54 at 911.

<sup>66</sup> Rule I, clause 6, § 1, *supra* note 54 at 911.

<sup>67</sup> Rule XX, Clause 3, § 1, *supra* note 54 at 911.

<sup>68</sup> Rule XX, Clause 4, § 1, *supra* note 54 at 911.

of the House Practice mentions “*Members shall vote on each question put...*”, in practice members can never be compelled and previous such attempts have been “uniformly unsuccessful”.<sup>69</sup> But this does not mean that the members can arbitrarily decide not to vote. The House does not permit a member to abstain from voting unless he is granted leave of absence.<sup>70</sup>

Like the system of “deferred divisions” in the UK, the US follows a method of “clustered votes” in which recorded votes on amendments or certain other votes lacking a quorum may be postponed to a later time and voted for together in a cluster.<sup>71</sup> Such cluster votes on specific provisions are taken both after a gap of two legislative days as well as simultaneously.<sup>72</sup>

Recorded votes are required for a wide variety of important questions in the US such as constitutional amendments, votes against the President’s veto, statutory provisions and when a member claims that there is a lack of quorum. Additionally, in order to make the system of recorded votes simpler, methods such as ‘cluster’ have been adopted. As a result of this transparency several public agencies are able to track almost every single vote cast by a member in the House so as to ascertain his stand.<sup>73</sup>

A true realisation of the potential of a participative democracy is possible if the Indian Parliament conducts divisions on all the final motions to adopt bills. While the rehashed argument of ‘convenience’ may be offered in defence of voice voting, the meaning of a transparent democracy seems to be lost at the altar of convenience. If a commonwealth jurisdiction like the British Parliament can ensure an intelligible system despite similar rules of procedure, arguably the Indian Parliament can as well. In the United States too, there is a far greater record of how a legislator has voted as compared to the record in India.

## Part II

Having examined the various voting procedures, this part engages with how much control political parties may be allowed to wield when an MP makes

<sup>69</sup> § 7, *supra* note 54 at 915.

<sup>70</sup> Rule III, Clause 1 § 7, *supra* note 54 at 915.

<sup>71</sup> Rule XX, Clause 8, Manual Sec 1030, *supra* note 54 at 931.

<sup>72</sup> *Id.*

<sup>73</sup> See the Congressional voting database, available at <http://projects.washingtonpost.com/congress/>

legislative decisions. This part provides an overview of some of the benefits of a Party system. It gives a brief history of what led to the evolution of the Tenth Schedule. It then suggests that for a context specific study of India, Party-line voting does not fall in line with the goal of right to information of a voter.

### III. Party Politics

Historically in India, political Parties set the tone of participative government during the freedom struggle. Originating as a consequence of such lofty ideals, parties were treated with sanctity and any betrayal of the Party line, as in the instance of the defection of a Congress Party legislator to the British side, invited wide condemnation.<sup>74</sup> The principle of a 'responsible government' that evolved, allowed the legislature to control the executive by a no confidence motion.<sup>75</sup> The principle of collective responsibility underlined Party cohesion, but political defections began to take place starting off the debate on an anti-defection law.

A committee was set up under the chairmanship of Home Minister, Y. B. Chavan to consider the problem of floor crossing. The report of the committee was tabled on February 28, 1969. On the basis of this report, a Constitution Amendment Bill was introduced in the Lok Sabha on May 16, 1973 and was referred to a Joint Committee of the two Houses. But before the Bill could be deliberated upon, the Lok Sabha was dissolved causing the Bill to lapse. Another Bill was introduced on August 28, 1978. The introduction of this Bill was fraught with controversy since it was criticized as failing to distinguish between defection and dissent.<sup>76</sup> After discussion, the motion for introduction of this Bill was withdrawn. Finally in 1985, the Constitution (Fifty-Second) Amendment Bill was passed which introduced the Tenth Schedule to the Constitution. The Amendment Bill also amended Articles 101, 102, 190 and 191 relating to vacation of seats and disqualification from the State Legislatures and Parliament.

<sup>74</sup> Prakash Chander, *Defection of Shyamlal Nehru to the British side after being elected from the Congress Party in India*, Government and Politics, 21 (1984).

<sup>75</sup> INDIA CONST, art 75 (3). See Glanville Austin, *The Indian Constitution: Cornerstone of a Nation*, 32-33 (1966).

<sup>76</sup> Madhu Limaye, *Politics After Independence*, 182-4 (1982).

## A. Free voting v. Party Mandate

“As in law, so in politics, it is imperative that the other side should be put, even when there is no other side.”<sup>77</sup>

The Indian political Party system and the accompanying politics are unique and this has been recognized numerously. Paul Brass, while discussing the Indian Party system described it thus: “Party Politics in India display numerous paradoxical features which reveal the blending of Western and modern form of bureaucratic organization and participatory politics with indigenous practices and institutions.”<sup>78</sup> It may thus be important to take these factors into account while discussing any law that touches upon Party control and legislative autonomy since the sources of authority may be distributed.

Prior to the introduction of the anti-defection law there were instances when a free vote has been adopted in India, albeit for shrewd political reasons. The Presidential election of 1969 in which Indira Gandhi’s government allowed free voting which ultimately led to the defeat of the Congress led candidate, reinforced the power of the free vote.<sup>79</sup> Indira Gandhi believed that Sanjiva Reddy, the Congress nominee, was being set up as a candidate by factions within the Congress which wanted to delegate powers to the President and weaken the office of the Prime Minister. To circumvent this political ploy Indira Gandhi adopted a free vote provision by which V.V. Giri, the opposition candidate won with the support of Congress rebels, the Socialists, Communists, the DMK and the Akali Dal.<sup>80</sup> While this may not be an ideal example, it nevertheless shows that India has had instances of using the free vote.

The idea of free voting was not wholly unknown to India and this is evident from a key agenda of the Swatantra Party which said, “The Swatantra Party holds that democracy is best served if every political Party allows freedom of opinion to its members on all matters outside the fundamental

<sup>77</sup> C. K. Allen, *Democracy and Individual*, 60 (1974).

<sup>78</sup> Paul Brass, *Politics of India Since Independence* 64 (1990), as cited in Zoya Hasan *Parties and Party Politics in India*, 2 (2002).

<sup>79</sup> Deep Chand Bandhu, *History of Indian National Congress, 1885-2002*, (2002).

<sup>80</sup> Mahendra Pratap Singh, *Split in a Predominant Party: The Indian National Congress in 1969*, Abhinav Publication, 1981.

principles of the Party. It, therefore, gives its members full liberty on all questions not falling within the scope of the principles stated above.<sup>81</sup>

### a) Yes, Party?

“Boredom with established truths is the great enemy of free men.”<sup>82</sup>

Some like Roosevelt had for many years advocated that supporting political parties was like supporting institutions itself and investing in their ideals and beliefs.<sup>83</sup> To be completely dismissive of the Party system would be unwise and pigeon-holed. Parties have to be appreciated for their decisive role in Indian politics. It is impossible to be blindsided about the Indian scenario and state that political parties have no place in the system. This paper therefore questions their position only in the context of legislative voting.

There was a time before the anti-defection law was introduced where nearly half the elected members had jumped parties at least once in their political career.<sup>84</sup> An important rationale for the anti-defection law therefore is the quid pro quo nature of politics itself. Political parties function as disciplined units and assist candidates in their electoral campaigns. In return they expect complete Party loyalty and cohesiveness amongst members. Some writers have analogized this mutual obligation to the tendency of parties to create and evoke friendships.<sup>85</sup> Some believe that Parties must speak in a uniform voice. India is a culturally and geographically diverse and heavily populated country and in such a context one may justify the existence of political parties even more, to assist the uninformed voter in making quick decisions. The average voter in India may not have sufficient knowledge of individual candidates and voting in line with a Party (or against it) becomes convenient and even practical.<sup>86</sup> In India it is believed that there is a need for

<sup>81</sup> The 21 Principles of the Swatantra Party (1959), available at <http://www.liberalParty-ofindia.sabhlोकcity.com/Party/21prin.doc>

<sup>82</sup> Bernard Crick, *In Defense of Politics* (2000), 15 as cited in Nancy L. Rosenblum *On the Side of the Angels, An Appreciation of Parties and Partisanship*, 5 (2008)

<sup>83</sup> Theodore Roosevelt, *American Ideals, and Other Essays Social and Political* (1920)

<sup>84</sup> Subhash Kashyap, *Anti-defection law and Parliamentary Privileges*, (2<sup>nd</sup> Ed, 2003)

<sup>85</sup> Jane Addams, *Why the Ward Boss Rules*, Outlook, 17-28, April 2, 1898 as cited in Nancy L. Rosenblum *On the Side of the Angels, An Appreciation of Parties and Partisanship*, 177-178 (2008).

<sup>86</sup> See e.g. Abhijit V. Banerjee, Selvan Kumar, Rohini Pande and Felix Su, ‘Do informed voters make better choices? Experimental Evidence from Urban India’ available at [http://www.yale.edu/leitner/resources/PMF-papers/delhi\\_rpmarv1-1.pdf](http://www.yale.edu/leitner/resources/PMF-papers/delhi_rpmarv1-1.pdf)

translation in politics and therefore political Parties are viewed as a link or a connection between the people and the politicians.<sup>87</sup> It may be the legitimate expectation of a voter that when she votes for a candidate of a particular Party, the candidate ought to act in line with the Party's decisions and when the candidate does not do so the voter may feel cheated or as Fitzpatrick puts it, 'hoodwinked'.<sup>88</sup> The contribution of political Parties in terms of raising campaign finance cannot be undermined<sup>89</sup> and even generally a candidate has access to more resources when she is supported by a political Party.<sup>90</sup> In countries like India where coalition governments have become the norm rather than the exception, elected candidates as cohesive parties count to form a government. In any event it may well be that a candidate is in complete agreement with her Party's views and will have even contested elections with the Party's manifesto. In such circumstances the candidate may be expected to follow through with her election agenda. Identity politics and the movement around "socio-economic fault-lines" has become a prominent feature of Indian politics.<sup>91</sup> This mobilization has meant centring the Party agenda around issues such as caste (examples include regional Parties such as the BSP, AIADMK, DMK and TDP), social lines (CPI-M, CPI) or communal lines (BJP, its supporter RSS). Through their identity latching thus, political Parties help eliminate candidates and assist in the process of choosing a suitable candidate. It may thus be argued that when there is such a broad socio-economic spectrum political Parties become necessary navigation tools to narrow the choices for voters.

When there are so many national level parties with no clear majority and a rise of regional parties in national politics<sup>92</sup> one would think that it may be appropriate to ensure discipline in this political circus and introduce

<sup>87</sup> A. H. Somjee, 'Party Linkages and Strife Accommodation in Democratic India' in Kay Lawson, *Political Parties and Linkage: A Comparative Perspective* 204-21 (1980) as cited in Zoya Hasan *Parties and Party Politics in India*, 5 (2002).

<sup>88</sup> John Fitzpatrick, *Switch as you Wish*, Brazzil, November 2001, Politics, available at <http://www.brazzil.com/p29nov01.htm>

<sup>89</sup> See generally, Dr. Jayprakash Narayan, *Indian Elections – Campaign Finance Reforms, National Seminar on Electoral Reforms*, November 17, 18, 2000 available at <http://www.loksatta.org/cms/documents/advocacy/ind%20elections.pdf>

<sup>90</sup> See e.g. John Fitzpatrick, *Switch as you Wish*, Brazzil, November 2001, Politics, available at <http://www.brazzil.com/p29nov01.htm>

<sup>91</sup> Zoya Hasan *Parties and Party Politics in India*, 20 (2002).

<sup>92</sup> Bernard Gwertzman *Indian Elections More About Small Regional Parties: CFR Interview* April

some method in the madness by mandating Party-line voting. The strongest argument of defection naysayers is that despite its existence there are frequent horse trades and candidates switching parties. Without the law there would be complete pandemonium.

The role of political Parties may be viewed as a form of ‘technocracy’ where the Party plays an important part in promoting a particular economic or social sector of its interest and in thus building a democratic developmental State.<sup>93</sup> Explaining this for example, take the case of how Minister Sharad Pawar promoted the sugar industry in Maharashtra through his entry into politics. The presence of political Parties may thus be justified as adding value to the process of legislating.

Nancy Rosenblum evaluates the role of political parties historically in the US and comes out overwhelmingly in their favour.<sup>94</sup> She notes that political parties “reduce transaction costs in a democracy”<sup>95</sup> She talks of James Bryce who described the advent of the American Party system in these glowing terms: “of all our political institutions not one is so new, so entirely made, as it were, out of whole cloth as the American Party system.”<sup>96</sup>

It is important to remember the vital distinction between dissent and defection. This paper does not question the undoubted role of political parties in organizing politics. But their vital role ought not to give them the authority to stifle the varying views of its members. For the purposes of Party loyalty, political accountability and order in the House, anti-defection laws become important. And yet when a law does not allow genuine dissent based on substantive reasons of what may be good for the country as a whole in the view of the candidate, it defeats the very purpose of parliamentary free expression. The Tenth Schedule as it stands today is such a law. Rosenblum observes that Lincoln Steffens views political parties as mechanisms to avoid (corruption based) oligarchies in a democracy since they would act

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15, 2009, HuffPost World available at [http://www.huffingtonpost.com/2009/04/15/indian-elections-more-abo\\_n\\_187154.html](http://www.huffingtonpost.com/2009/04/15/indian-elections-more-abo_n_187154.html)

<sup>93</sup> Vicky Randall, *Political Parties and Democratic Developmental States*, 25 (5) Development Policy Review, 633, 634-645.

<sup>94</sup> Nancy L. Rosenblum *On the Side of the Angels, An Appreciation of Parties and Partisanship*, 5 (2008).

<sup>95</sup> Richard S. Katz & Peter Mair *Changing Models of Party Organization and Party Democracy The Emergence of the Cartel Party, Party Politics* January 1995 vol. 1 n.º 1 5-28 as cited in *id.* at 4.

<sup>96</sup> Jesse Macy, *Party Organization and Machinery* Chapter xi-xii (1904) as cited in Rosenblum, *supra* note 93 at 166.

as a “medium of revolution.”<sup>97</sup> In the India scenario this may not apply. It may however be counter argued that if parties have specific agendas or goals in mind such as say maximum monetary gains or the control of a certain sector, the electorate by voting for or supporting the political Party unknowingly ends up supporting this agenda. Taking this point a step further, if the Constitution itself (in our case through the Tenth schedule) supports this agenda, a State supported oligarchy is created. The goal of the oligarchy starts to reflect as if it were the goal of the people themselves. In reality however the people may even be unaware of the fact that their support of the political Party has led to their indirect support of the oligarchic tendencies of the Party. In this context is therefore a real danger in assuming that MPs must necessarily reflect or tend to all the goals of their political Parties. This link may however be broken the moment a Party has no role to play in an MP's voting decisions. In fact by voting against Party line (or neutral to Party line), the candidate may be rescuing the electorate from a concentration of power. In such a background some writers have compared political Parties to the form of an organized mafia which has to its disposal all the necessary resources of power and uses its offices to provide benefits to its members and followers.<sup>98</sup>

The central touchstone of the anti-Party stand is that parties act as a cohesive unit and that people lose their independence as a result. If independent units within the Party begin to act in blind obedience of the Party they immediately draw criticism from anti-Party activists. If however oligarchic tendencies of the Party are put to rest and Party members are instead allowed to use independent judgment and act as actors devoid at least to some measure of partisan tendencies, the anti-Party objection will disappear. The stand taken in this paper is not anti-Party per se, it is instead positioned as being in support of partisan behaviour for the most part since it is a convenient and beneficial tool in a democracy like India so long as members have the option of dissent if they deem it fit.

<sup>97</sup> Lincoln Steffens, *The Struggle for Self-Government; being an Attempt to Trace American Political Corruption to its Sources in Six States of the United States*, (1906) as cited in Rosenblum, *supra* note 93 at 167.

<sup>98</sup> Rosenblum, *supra* note 93 at 175.

## b) The Tenth Schedule and its Implications

Parties are not sufficiently representative of the interests and goals of the entire electorate. Randall has described them as “clientelistic”, which means that Parties may succeed in representing specific interests that support (and raise funds for them) but are unable to represent the “masses”.<sup>99</sup> Additionally, to the extent of the specific ‘class’ a Party purports to represent, such as say ‘the lower castes’, ‘women’, ‘the sugar belt’ etc. or sometimes when the Party becomes an eminent part of a prevailing national movement, it may be said that Parties are representative.<sup>100</sup> In India this becomes difficult however since identities are constantly evolving and Parties have to position themselves wisely including changing their stance depending on the existing political atmosphere.<sup>101</sup> These factors have not been taken into account at all while applying the Tenth Schedule.

The Tenth Schedule gave constitutional recognition to political Parties for the first time. Prior to this amendment to the Constitution, the only mention of a political Party was in the Registration of Electors Rules, 1960 with respect to election symbols.<sup>102</sup> Para 2(1)(b) of the Tenth Schedule provides that

“...[A] member of the House belonging to any political Party shall be disqualified for being a member of the House if he votes or abstains from voting in such House 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 condoned by such political Party, person or authority within fifteen days from the date of such voting or abstention.”

It is this provision that first recognized and made mandatory voting according to Party line. Articles 105 and 194 of the Constitution give complete freedom to legislators to vote in the Parliament free from court

<sup>99</sup> Randall. *supra* note 92 at 645-646.

<sup>100</sup> Randall, *supra* note 92 at 638, 644-645.

<sup>101</sup> Zoya Hasan *Parties and Party Politics in India*, 32 (2002).

<sup>102</sup> The rule dealt with supplying 2 copies of electoral rolls to political parties for which symbols had been received. See, *Chawla's Election Law and Practice*, 1708 (2004).

proceedings. It has time and again been pronounced by the Supreme Court that the freedom of expression of members in the House is on a higher footing than that of a citizen because of the special function performed by them.<sup>103</sup> The dichotomy between the Tenth Schedule and Articles 105 and 194 can be obliterated only if the Tenth Schedule is read as subject to Party hopping alone and not voting in the Parliament. In *Kiboto Holloban v. Zachilbu*, the Supreme Court has also emphasised that, “[W]e approve the conclusion that these words require to be construed harmoniously with the other provisions and appropriately confined to the objects and purposes of the Tenth Schedule.”<sup>104</sup>

It has become customary to assume that when the government is defeated on any substantial issue it automatically means that it has lost the confidence of the House.<sup>105</sup> This is an incorrect understanding of the Parliamentary model of governance. After a defeat on a major policy issue, a government must subsequently dissolve only when a vote of no confidence is positively made against it.<sup>106</sup> When the Indian Parliament debated the nuclear deal on 22 July, 2008, the question whether the government had requisite support had to be decided only after a no-confidence vote was taken and not merely because several MPs voiced their protest against the deal.<sup>107</sup> Even on matters of prime importance to the Party belief, if members are to vote outside the Party line it will not lead to immediate instability of the government.

The wide wording of paragraph 2(1)(b) by the use of the term “*any direction*” has curtailed parliamentary freedom to vote based on conscience

<sup>103</sup> M.S.M. Sharma v. S.K. Sinha, A.I.R. 1959 SC 395 and the Keshav Singh Presidential Reference, (1965) 1 S.C.R. 413.

<sup>104</sup> A.I.R. 1993 SC 412. The Statement of Objects and Reasons to the Constitution (Fifty Second) Amendment Act, 1985, states: “The evil of political defections has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it. With this object, an assurance was given in the Address by the President to Parliament that the Government intended to introduce in the current session of Parliament an anti-defection Bill. This Bill is meant for outlawing defection and fulfilling the above assurance.”

<sup>105</sup> See G.C. Moodie, *The Government of Great Britain* 100 (1964), and J. Honvey and L. Bather, *The British Constitution* 234 (1965).

<sup>106</sup> Philip Norton, *Government Defeats in the House of Commons, Myths and Reality*, Public Law 360-378 (1978).

<sup>107</sup> See Resume of Work, available at <http://164.100.47.132/LssNew/secretariat/summary1414.pdf>

completely. When the constitutional validity of the Schedule was challenged, in its landmark judgment in *Kiboto Hollobon v. Zachilbu*,<sup>108</sup> the Supreme Court in order to contain this far reaching blot on legislative freedom, sought to read down the words ‘any direction’ to two main areas. The Court held,

“The disqualification imposed by Paragraph 2(1)(b) must be so construed as not to unduly impinge on the said freedom of speech of a member. This would be possible if Paragraph 2(1)(b) is confined in its scope by keeping in view the object underlying the amendments contained in the Tenth Schedule, namely, to curb the evil or mischief of political defections motivated by the lure of office or other similar considerations. The said object would be achieved if the disqualification incurred on the ground of voting or abstaining from voting by a member is confined to cases where a change of Government is likely to be brought about or is prevented, as the case may be, as a result of such voting or abstinence or when such voting or abstinence is on a matter which was a major policy and programme on which the political Party to which the member belongs went to the polls. For this purpose the direction given by the political Party to a member belonging to it, the violation of which may entail disqualification under Paragraph 2(1)(b), would have to be limited to a vote on motion of confidence or no confidence in the Government or where the motion under consideration relates to a matter which was an integral policy and programme of the political Party on the basis of which it approached the electorate.”

- a. This interpretation means that a petition for disqualification is in order only if a member, Votes or abstains from voting against the Party line upon a no-confidence motion or;
- b. When a member votes or abstains from voting against the Party line upon an integral policy and programme of the political Party on the basis of which it approached the electorate.

### **C. The Case against Party Control in voting, Kihoto Notwithstanding**

In this part the paper argues as to why Party-line voting is unsuitable for India.

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<sup>108</sup> A.I.R. 1993 SC 412.

Although the Kihoto judgment seems to have limited controlled voting to some extent, it has caused grave problems by using ambiguous and ill-defined words like “*integral policy and programme of the political Party on the basis of which it approached the electorate.*” The Court by these words has sought to propagate the Mandate doctrine. The Mandate doctrine assumes that electors vote for candidates based on their Party affiliation. Hence once elected on the basis of a recognized set of principles or agendas, the candidate must toe the line and stay true to her Party’s promise on whose basis the constituents voted for her. This doctrine assumes that every Party has a definite agenda and it is only on that basis that voters elect a candidate. This assumption is far from the truth. In India, parties like the BSP have no election manifesto.<sup>109</sup> It is impossible for a political Party to have a stand on each and every issue and there are several policies that may not have been foreseen by the Party. In such circumstances, a Party makes spot decisions based on superfluous considerations of ‘Party image’, profitability or alliance politics. This is fine when real-time actions have to be taken. Unfortunately, the Tenth Schedule allows a Party to bind its MPs to any such spot decisions since in practice the Speaker does not really distinguish between three line whips based on whether it is a core policy of the Party or otherwise. Even in mature political systems like the UK, very rarely have votes been sought on a definite mandate.<sup>110</sup>

Voters cast their votes based on a series of factors such as performance of the candidate, specific issues that they believe in strongly, religious affiliations, image of a particular candidate, promised sops, etc. Party manifesto may hardly ever surface in this list and if it does it has only a small role to play. Dawn Oliver has rightly stated that

“votes are not cast only in response to manifesto pledges but for many other reasons such as to protest against (or express approval for) the existing government’s past performance, to express a view about the

<sup>109</sup> In her election speech Mayawati said, “*As it is known to all, Bahujan Samaj Party or B.S.P. is the only Party in the country, which believes in deeds and not in words. That is why our Party, unlike other parties does not release an election “Manifesto” rather B.S.P. only makes an “APPEAL” to people for votes...*” See Mayawati’s promise to India: BSP Manifesto, April 16, 2009. available at <http://samatha.in/2009/04/16/mayawatis-promise-to-india-bsp-manifesto/>

<sup>110</sup> See P. Ishwara Bhat, *Free Legislative Choice and Anti-Defection Law-A Plea for Integrated Reading*, (1994), 18 Acad. Law Rev., 65.

Party's leaders or its general philosophy, to obtain the benefit of particular policy, and so forth."<sup>111</sup>

As pointed out by Henry Maine, the venue of legislative policy making should not shift from the Parliament to the room of the Party caucus. A candidate when victorious is a representative of all the constituents of her constituency and not just those who voted for her. In fact if the voter turnout is small (say about 60%) and only a little over half of that number has voted for the candidate (say about 40%), it will mean that by constantly voting in the House based on that small number she will be failing to represent a vast majority of her own constituents that is 60%!<sup>112</sup> This is bound to happen in India's First Past the Post election system. So in the words of John Stuart Mill, "*the majority of the majority are quite often minority of the whole.*"<sup>113</sup> Debate in the Parliament is made meaningless by having such control over the votes of an MP. If parties themselves are undecided over issues and often change their mind based on the issue at hand and the intervening circumstances, by the same token why should Parliamentarians be deprived of a choice to change their mind?

As pointed out earlier, even if members vote against a major policy or issue of the government, it will not lead to a fall of the government unless a no confidence motion is expressly passed. Commenting on the situation in the UK, Geoffrey Marshall points out that there is no constitutional principle in the Westminster system that a defeat of the Government over a specific policy issues is any evidence of it losing confidence in the House.<sup>114</sup>

Even the *Kihoto* judgment does not expressly negate the argument that the Tenth Schedule stifles legislative freedom. It attempts to rationalize the provisions of the Schedule by calling it "*an area of experimental legislation*" which has its "*plus and minus points*".<sup>115</sup> Defending the role of political Parties, the Court goes on to say,

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<sup>111</sup> Dawn Oliver, *The Parties and Parliament: Representative or Intra Party Democracy?* in Jeffrey Jowell, and Dawn Oliver, *The Changing Constitution* 114-115 (1985).

<sup>112</sup> In the First Past the Post election system, since the margin for electoral success may be quite low, circumstances occur when minority views may really be the view of the majority. Or sometimes the difference between the majority and the minority is very minute.

<sup>113</sup> John Stuart Mill, *Considerations on Representative Government* 147 (1882).

<sup>114</sup> Marshal Geoffrey, *Constitutional Conventions-The Rules and Forms of Political Accountability* 56 (1984).

<sup>115</sup> A.I.R. 1993 SC 412, at 614.

“Any freedom of its Members to vote as they please independently of the political Party’s declared policies will not only embarrass its public image and popularity but also undermine public confidence in it which, in the ultimate analysis, is its source of sustenance -- nay, indeed, its very survival...”<sup>116</sup>

Such a view sacrifices free and informed legislative choice at the altar of a ground as frivolous as a ‘Party’s image’. Further, in the Kihoto judgment, the Court at one point makes room for a narrow interpretation of the words ‘any direction’ by pointing out that Para 2(1)(b) itself makes two exceptions under which a member may vote free of his Party’s views, namely, when he takes permission from the Party or when the Party subsequently ratifies his action. The Court then goes on to reason that these exceptions,

“may provide a clue to the proper understanding and construction of the expression “Any Direction” in Clause (b) of Paragraph 2(1)—whether really all directions or whips from the Party entail the statutory consequences or whether having regard to the extra-ordinary nature and sweep of the power and the very serious consequences that flow including the extreme penalty of disqualification, the expression should be given a meaning confining its operation to the contexts indicated by the objects and purposes of the Tenth Schedule.”<sup>117</sup>

If a Party wishes to punish a member for contravening its directions it should be free to expel its members or take disciplinary action against them as in other jurisdictions. Allowing a Party to usurp the power of the legislature, that is, of disqualifying the members from the House, is overreach and a precedent that no other country apart from India follows under the guise of a ‘legislative experiment’.<sup>118</sup>

The Members of Parliament also perform some quasi-judicial functions such as impeaching the President of India under Article 61, removing Supreme Court judges under Article 124(4), removal of the Chief Election Commissioner under Article 324(5) etc. These functions if fettered

<sup>116</sup> *Id.*

<sup>117</sup> Kihoto Hollohan v. Zachilhu, A.I.R. 1993 SC 412.

<sup>118</sup> See *infra* Parliamentary Voting Across the Globe.

by Party directive will go against the principles of natural justice.<sup>119</sup> Also when the elections of the President and the Vice President take place by secret ballot, which means the voting is free, it is against Article 14 (right to equality) to allow other quasi-judicial functions to be dictated by Party norms.

It was observed by the then Speaker Shivraj Patil in the famous Janata Dal – V.P. Singh defection that the anti-defection law seriously curtails the privilege of members since they have to strictly obey Party whips. Patil felt that members were thus denied even the ordinary freedom of voting, a freedom that was freely available to every citizen outside the Parliament.<sup>120</sup>

Some examples from the recent past highlight the need to debate the presence of the Tenth Schedule in the light of open opposition amongst MPs for their Party's policies. In August 2010, the Congress Party backed Educational Tribunal Bill did not pass in the Rajya Sabha (upper House) since the Party's own MPs were not too supportive of the legislation.<sup>121</sup> Such incidents are common. In 2009 for instance, the Congress Party led United Progressive Alliance (UPA) government had to defer the introduction of the Judges (Declaration of Assets) Bill 2009 in the Rajya Sabha. Congress MPs opposed the Bill arguing that it went against the spirit of the Right to Information Act that was one of the UPA government's flagship legislations.<sup>122</sup> This showed that there was direct opposition from the MPs on a bill supported by their own Party. In November 2009, Vice-President Hamid Ansari, who is also the Chairman of the Rajya Sabha, proposed that political parties should restrict whips to only bills and motions that could threaten the survival of the government so that MPs could air their views freely on critical issues.<sup>123</sup>

<sup>119</sup> See Dr. Subhash Kashyap, *Disqualification on Grounds of Defection, Parliamentary Procedure, Law, Privileges, Practice and Procedure*, (2d ed. 2004).

<sup>120</sup> *Id.* at 995.

<sup>121</sup> Times News Network *Educational tribunal bill deferred after Cong MP leads opposition*, The Times of India, September 1, 2010, [http://articles.timesofindia.indiatimes.com/2010-09-01/india/28252954\\_1\\_hrd-minister-kapil-sibal-opposition-members-national-educational-tribunals-bill](http://articles.timesofindia.indiatimes.com/2010-09-01/india/28252954_1_hrd-minister-kapil-sibal-opposition-members-national-educational-tribunals-bill)

<sup>122</sup> Santosh K. Joy and Ruhi Tewari *Some Cong MPs join Opposition to Stall Law on Judges' Assets*, Livemint.com, August 3, 2009. <http://www.livemint.com/2009/08/03152250/Some-Cong-MPs-join-Opposition.html>

<sup>123</sup> *Curtail whips, give MPs freedom: V-P*, The Indian Express, November 19, 2009. <http://www.indianexpress.com/news/curtail-whips-give-mps-freedom-vp/543516/>

To respect the institution of political Parties, a distinction could be made between an administrative function and a legislative function to say that ‘stability of the government’ being the basis of sustainability of the Parliament, members may be asked to vote in line with Party views. In all other respects, free legislative choice seems necessary.

#### d) The Role of the Party Whip

“[T]he domination of the electoral process by mass-member political parties, which each expect that all “their” MPs will toe the Party line once they enter Parliament, has served to undermine —some would even say erase— the distinction between “Parliament” and “government”.<sup>124</sup>

In this part the paper notes that the Party Whips perform the function of ensuring partisan voting.<sup>125</sup> While Party Whips are common globally, in India their role becomes more important than in any other jurisdiction. This is because they convey the information of when a vote has to be compulsorily cast as per Party line. As this part details, in India there is no provision of recording these Whips or no statutory mandate controlling the action of Whips as also the content of an issued “whip”. This has sometimes caused unfair dismissals even without sufficient evidence showing that the information was conveyed/received. As the situation stands today Party Whips are viewed as purely political actors that organize the various constituents together. While the norm is to obey a three-line Whip there is no statute that states that disobedience will lead to expulsion (since the Tenth Schedule merely talks of disobeying “any direction” of the Party without specifying how that direction might be conveyed). Yet in practice, disobedience of a three-line whip has frequently led to dismissals. Given the importance then of these instruments, it seems almost imperative that there ought to be a law specifying how Party whips may be used, how they may be relayed to MPs, their frequency and relative importance and who may be authorized to issue them.

<sup>124</sup> Andrew Geddis, *Some Questions for the United Kingdom’s Republican Constitution*, 19 Can. J.L. & Juris. 177.

<sup>125</sup> In this part a Whip may refer to the person in charge of issuing party whips (or in the case of the majority Party in government, the Minister of Parliamentary Affairs). It also refers to the paper instructions for voting called ‘whips’ which may be one line (optional), two line (somewhat mandatory) and three line (strictly compulsory).

After the introduction of the Tenth Schedule the role of the Party whip in India assumed great significance. When taken literally a ‘whip’ is used to control actions and that is the primary function of the office of the whip. The office of the whip serves as a channel of communication and helps in the flow of instructions and information from the Party leaders to the other members and backbenchers.<sup>126</sup> Whips ensure attendance, obedience to Party discipline and voting on specific issues. As observed in the report of the Chief Whips’ Conference, “The Whips are responsible for carrying on, efficiently and smoothly, the organisation of the parties inside the Legislatures. The Whips have to keep a vigilant eye on the proceedings of the House and have to be ready to meet any emergency in the House.”<sup>127</sup>

In India, the government has a chief whip known as the Chief Government Whip who is the Minister of Parliamentary Affairs.<sup>128</sup> Party whips on the other hand are individuals whom the respective parties appoint. Hence while the Parliamentary Affairs Ministry assists the Chief Government Whip, individual Party whips are outside any such statutory scheme. *The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998* was the first legislation to recognize the institution of Chief Whips of parties. The Act does not define the term ‘chief whip’ and its primary purpose is to provide telephone and secretarial services to Chief Whips. Barring this Act, there is no other legislation that controls the behaviour of the Party whips. Thus in India the behaviour of whips, their extent of control over Party members, the disciplinary actions they are entitled to take etc. remain largely unregulated and for all practical purposes are based on the prerogative of the Party leadership.

As Dr. Subhash Kashyap observes, the Chief Government Whip acts as the ‘eyes and the ears of the leader of the Party’, and it is his responsibility to manage the Party, effectively exercising the art of ‘whipcraft’.<sup>129</sup>

<sup>126</sup> Robert J Jackson, *Rebels and Whips; An Analysis of Dissensions, Discipline and Cobesion in British Political Parties* 36 (1968).

<sup>127</sup> All India Whips Conference, Chapter 14, Handbook on the Working of the Ministry of Parliamentary Affairs, available at <http://mpa.nic.in/mpahandbook/parlia14.pdf>

<sup>128</sup> See the Notification dated May 16, 1949 by which the Minister of Parliamentary Affairs was made the Chief Government Whip. Available at <http://mpa.nic.in/mpahandbook/parlianx1.pdf>

<sup>129</sup> Dr Subhash Kashyap, *Party Whips, Parliamentary Privilege and Anti-Defection Law*, 1998, The Journal of Parliamentary Affairs, at 151.

There are 3 types of whips. A three line whip (where the instructions are underlined thrice) is the most crucial and its disobedience can lead to consequences as grave as removal from the legislature. When a three-line whip is issued, a division is generally expected (which means that a member's vote may be traced) and obeying such a whip is mandatory.<sup>130</sup> A one-line whip merely requests for the attendance of members to the House and where a division is not expected while a two line whip is for relatively important business and a division is likely.

An important point to note is that whips issued in India direct members to be present and vote to support the government, while those issued in the British Parliament merely 'request' the members to be present. In Britain, the whips seek to inform the members regarding the business of the House and ensure their attendance.<sup>131</sup> Since the members view whips as privileges of Party membership, they are free to refuse such whips. Anything beyond these functions is viewed in Britain as unnecessarily impinging upon the freedom of expression of the legislators. As Robert Jackson notes, Party discipline is impossible to achieve through the "language of threats".<sup>132</sup> In the Labour Party's code of conduct for example, there are a series of disciplinary actions of increasing severity which begin with a written reprimand from the chief whip, then suspension, followed by the extreme case of withdrawal from the Party. Thereafter, she may also be expelled from the national Party.<sup>133</sup> None of these steps however lead to complete expulsion from the legislature, which is a function wholly beyond the power of Party whips. Also notably, the House of Commons has not seen an MP punished with expulsion for disobeying the Party whip in the division lobbies in many years.<sup>134</sup> The reason for such a strikingly distinct position of the same entity across two jurisdictions is because of the level of authority wielded. Naturally, in India when there is an existing power to expel, the Whip's orders have an enforceable position. Still, the British Parliament where this institution

<sup>130</sup> *Id.*, 127.

<sup>131</sup> Lord Hallsham observed that "Whips only tell members to come, not how to vote" in Robert J Jackson, *Rebels and Whips; An Analysis of Dissensions, Discipline and Cobesion in British Political Parties*, 169-70 (1968).

<sup>132</sup> Robert J Jackson, *Rebels and Whips; An Analysis of Dissensions, Discipline and Cobesion in British Political Parties* 305 (1968).

<sup>133</sup> Kenneth Bradshaw and David Ping, *Parliament and Congress*, 34 (1972).

<sup>134</sup> Robert J Jackson, *Rebels and Whips Rebels and Whips: An Analysis of Dissensions, Discipline and Cobesion in British Political Parties*, 215 (1968).

evolved continues to treat Whips as powerful yet elective authorities. This speaks to the scope of authority the institution is traditionally expected to bear. And yet in India Whips have changed to greatly powerful entities without any responsible legislation to map this power.

The Supreme Court, in *Kiboto Holloban*,<sup>135</sup> held that since the consequence of disobeying a whip would lead to disqualification, the direction of the whip should be clearly worded. The Court stated,

“Keeping in view the consequences of the disqualification i.e., termination of the membership of a House; it would be appropriate that the direction or whip which results in such disqualification under Paragraph 2(1)(b) is so worded as to clearly indicate that voting or abstaining from voting contrary to the said direction would result in incurring the disqualification under Paragraph 2(1)(b) of the Tenth Schedule so that the member concerned has fore-knowledge of the consequences flowing from his conduct in voting or abstaining from voting contrary to such a direction.”

A study of a sample of whips issued by various parties in the Lok Sabha confirms that parties go well beyond the purview of the Tenth Schedule as narrowed by the *Kiboto*<sup>136</sup> directive. On December 20, 2008, the Rashtriya Janata Dal issued a three line whip to its members stating “*the following important Bills will be taken up in the Lok Sabha on Monday, the 22<sup>nd</sup> and Tuesday the 23<sup>rd</sup> December, 2008... All Members of Rashtriya Janata Dal (RJD) in Lok Sabha are requested to be present in the House throughout the day on 22<sup>nd</sup> and 23<sup>rd</sup> December, 2008 positively and support the Government’s stand.*” Thereafter a list of eight odd Bills was reproduced including the Gram Nyayalayas Bill, 2008, The Information Technology Amendment Bill, 2008, The Code of Criminal Procedure Amendment Bill, 2006 etc. The three line whip ended with the following words, “*Please Note that Voting for election of Members of (1) Employees’ State Insurance Corporation...will be held from...and therefore requested to cast your vote in favour of UPA candidates.*”<sup>137</sup> The RJD just issued a sweeping whip asking its members to vote in favour of the government *regardless of*

<sup>135</sup> A.I.R. 1993 SC 412.

<sup>136</sup> *Id.*

<sup>137</sup> See *Appendix 2*.

*whether the list of Bills was central to policies of the Party.*<sup>138</sup> A defiance of this whip may have led to a petition for disqualification. This example clearly shows the extent to which voting in the House is controlled by Party politics, thereby rendering a ‘conscience based choice’ almost impossible.

A three-line whip in India has not even spared voting of members of the Lok Sabha to Parliamentary Committees. This function by itself is quasi judicial and has little to do with a Party’s ‘major policy or program’. Yet on July 30, 2009, the National Congress Party issued a three-line whip to its members to cast a vote in favour of UPA candidates in the election of members of the Lok Sabha to the Committee on the Welfare of Schedule Castes and Scheduled Tribes.<sup>139</sup>

Sometimes whips issued are devoid of clarity despite the plain instruction of the Supreme Court that they must be clearly worded. For example, the Bharatiya Janata Party (BJP) through its erstwhile chief whip Maya Singh, issued a three line whip<sup>140</sup> on July 30, 2009 which said that the Constitution (One Hundred and Ninth Amendment) Bill, 2009 would be taken up for discussion and passing. All members of the BJP were requested to be present in the House throughout the day and take part in the proceedings “*as per the instructions of the Leader of the Party*”. The whip makes no mention of the manner in which members are expected to take part in the discussions, the stand of the Party is not clarified nor does it say what side of the debate members are to support. Such a direction apart from being totalitarian is also arbitrary and vague.

When faced with three line whips of this nature are members expected to wait till the Party leader makes up her mind and then just duplicate her opinion? Surely parliamentary debate was meant for more than just conforming. The result is that the Parliamentarian is left voiceless. Adam Tomkins while condemning the practice of ‘whipping’ Party members had said, “[t]here should be no institutional means —save for seeking to justify the merits of their policies in open parliamentary debate— by which the government is able to secure parliamentary support.”<sup>141</sup>

<sup>138</sup> This article provides an overview of RJD’s manifesto. Nowhere does the subject matter of the Bills mentioned above figure in its manifesto. *RJD Releases Poll Manifesto*, The Times of India, April 5, 2009, [http://articles.timesofindia.indiatimes.com/2009-04-05/india/28036813\\_1\\_poll-manifesto-dalit-muslims-sc-status](http://articles.timesofindia.indiatimes.com/2009-04-05/india/28036813_1_poll-manifesto-dalit-muslims-sc-status)

<sup>139</sup> See *Appendix 3*.

<sup>140</sup> See *Appendix 4*.

<sup>141</sup> Adam Tomkins, *Our Republican Constitution*, (2005).

Further since there is no law governing the issuance of whips often copies of the whips are not sent to anyone other than Party members. It is thus impossible to know whether a whip was actually issued, since neither the Speaker nor the Minister of Parliamentary affairs receives copies of these whips. It is only when a petition for anti-defection is received by the Speaker that a record/copy of the whip issued first comes to light. Anti-defection orders passed by the Speaker in the 14<sup>th</sup> Lok Sabha<sup>142</sup> show not only the dire need for Party whips to be institutionalized but the extent to which they seriously hamper legislative freedom of the MPs. In one instance, former BJP MP, H. T. Sangliana had defended his vote in favour of the nuclear Bill (against BJP's three line whip) since he had not been aware of the whip. According to him the whip was issued orally. He had therefore, gone ahead and voted according to his conscience only to incur a disqualification.<sup>143</sup>

In another startling case, an MP claimed that he had not understood the motion and had thus voted against it. Samajwadi Party MP Ateeq Ahmed voted against the trust vote over the Nuclear Deal in 2008 and said in his defence, *"I have not understood what the deal is all about. Though I listened very attentively to the debate throughout yesterday, I could not make any head or tail out of it."*<sup>144</sup>

It is often argued that Party whips are issued since it is impossible for the public to know the stand of individual MPs and when they are given the cloak of a particular Party, the Party's views and preferences may be automatically transposed to the MP. This makes it easier for voters to ascertain the preference of the MP.<sup>145</sup> It is submitted that this is precisely the reason why votes of MPs should be recorded so that voters have an easy access to their voting record like they do in other countries and do not have to rely upon 'Party stands' or whips. Naturally, the position of the Party will also have to be formally crystallized so that the voter has two criteria on the basis of which she may judge the performance of the MP. First, how the MP voted and second, what the Party stand on the issue was, that is, how the Party would have wanted the MP to vote. The voter's personal allegiance to

<sup>142</sup> See *Appendix 5*.

<sup>143</sup> In the matter of Santosh Gangwar v. Dr. H T Sangliana, October 3, 2008, available at <http://164.100.47.132/bulletinII/2008/7.10.2008.pdf>

<sup>144</sup> *Trust vote and after: MP to vote against govt as he doesn't understand N-deal*, Sify News, July 22, 2008, available at [http://sify.com/news/fullstory.php?a=jehbOMhbchi&title=MP\\_to\\_vote\\_against\\_govt\\_as\\_he\\_doesn\\_t\\_understand\\_N\\_deal](http://sify.com/news/fullstory.php?a=jehbOMhbchi&title=MP_to_vote_against_govt_as_he_doesn_t_understand_N_deal)

<sup>145</sup> Andrew Geddis, *Some Questions for the United Kingdom's Republican Constitution*, 19 Can. J.L. & Juris. 177.

either the MP's stand or that of her Party will assist in determining the fate of the MP in the next election.

Institutionalising Party whips is necessary. A copy of each issued whip ought to be sent to the Minister of Parliamentary Affairs. In addition the State ought to prescribe guidelines as to the extent to which whips may be allowed to control the voting autonomy of MPs. Until this is done, for the public, Party directives will continue to be shrouded in mystery, bereft of any restraint.

This part highlights two important points. Firstly, the Tenth Schedule's narrow interpretation as per *Kiboto* (restricted votes based on a Party's specific manifesto) is impossible in practice. Secondly the mechanism through which the Tenth Schedule is implemented (whips) is itself questionable since there is no method, orderliness or account. This complicated arrangement makes any real link between a Party's ideology (if any) over a current issue and the final vote cast by its MP rather tenuous. It seems like the very basis of the *Kiboto* judgment is rendered nugatory in its practical application. Perhaps therefore it may be best that a Party takes a back-seat at least when an MP is making legislative decisions. There are several other ways in which political Parties can influence policies even when deprived of the power of enforcing compulsory voting. In this way their importance in the arena of political decision making will not be undermined.

## B. Parliamentary Voting Across the Globe

Controlling voting behaviour in the UK House of Commons is strictly prohibited. Though modelled on the British Westminster system, voting in the Indian Parliamentary system is, as chronicled above, severely controlled by Party dictates. While Parties routinely issue whips, non-observance of the whips can at best lead to an expulsion.<sup>146</sup> There are no provisions in the Parliaments of UK, US, Canada, Switzerland or France to penalise defection or dissent.<sup>147</sup> Article 27 of the French Constitution states, "*No Member shall be elected with any binding mandate*"<sup>148</sup> The Swiss Constitution has like provi-

<sup>146</sup> Kenneth Bradshaw and David Ping, *Parliament and Congress*, 34 (1972).

<sup>147</sup> Dr. Subhash Kashyap, *Disqualification on Grounds of Defection, Parliamentary Procedure, Law, Privileges, Practice and Procedure*, (2d ed. 2004).

<sup>148</sup> 1958 FRA CONST., article 27, available at <http://www.assemblee-nationale.fr/english/8ab.asp#IV>

sions.<sup>149</sup> In France while members sometimes voted against the Government, when a confidence motion was in order, members voted in Party line.<sup>150</sup> Thus it is generally seen that while performing legislative functions, members are free to exercise their views as per their conscience, but when an administrative function of ‘no confidence’ comes to play, members vote in conformity with their parties thus neatly balancing stability with independence.

In this paper five jurisdictions namely the UK, USA, New Zealand, Canada and Australia have been analyzed below through case law and commentary to see how much control parties exercise over Parliamentarians and lessons that India can learn from them.

### a) United Kingdom

The English Parliament was historically divided into two: the ‘Whigs’ and the ‘Tories’.<sup>151</sup> During this time House resolutions were being made based on the total strength of the House. The true ‘menace’ of Party defection reared its head in 1742, during the rigged Chippenham bye-elections when the government lost support by one vote and this was taken as a loss of confidence, then Prime Minister Robert Walpole having to resign the same day.<sup>152</sup> This event set an incorrect precedent (up until the 1970’s) where every floor defeat on a major policy was considered a loss of confidence. Naturally then to curb frequent government defeats, tighter whips were enforced. Three line whips were issued to ensure member attendance in division lobbies.<sup>153</sup> Disobedience brought suspension or expulsion from the Party.<sup>154</sup> There may have been concessions made against individual defections but mass defections were not tolerated.<sup>155</sup>

<sup>149</sup> 1999 SWISS CONST, article 161 says, “Members of the Federal Parliament vote without instructions.” Available at [http://www.servat.unibe.ch/icl/sz00000\\_.html](http://www.servat.unibe.ch/icl/sz00000_.html)

<sup>150</sup> Phillip M Williams, *The French Parliament 1958-67*, 89, 109 (1968).

<sup>151</sup> 1 Ivor Bulmor Thomas, *The Growth of the British Party System*, 41, (2d ed. 1967).

<sup>152</sup> See generally Sir Ivor Jennings, *Cabinet Government*, 15-18, 520 (3d ed. 1959); See also Cecil S Emden, *People and the Constitution*, 101-131 (2d ed. 1956). For an overview of the Chippenham controversy see XI Samuel Rawson Gardiner, *England*, 481-485 (Augustus Hunt Shearer, 1906).

<sup>153</sup> Robert J Jackson, *Rebels and Whips Rebels and Whips; An Analysis of Dissensions, Discipline and Cobesion in British Political Parties*, 39 (1968).

<sup>154</sup> *Id.* at 203-210

<sup>155</sup> *Id.*

However, it is important to note that despite the fact that Party voting increased close to 100% (average of 99.8% amongst Conservatives and 99.5% for Labour) between 1945-74 a number of important bills continued to face dissension and this led to a change in Party policy.<sup>156</sup> MPs then began to dissent against the Whip's order more often. Despite the fact that several MPs dissented and the government was defeated on important issues it did not need to resign.<sup>157</sup> Only an explicit no confidence motion defeat led to resignation. Soon Party whips began to be described as 'feather dusters'.<sup>158</sup> As Graham Wilson observes, "many modern British governments have endured at least one significant defeat in the House of Commons without resigning, and most have had to modify policy proposals in the face of the likelihood of losing a key vote."<sup>159</sup> Thus in the UK even today the established practice is that although Parties routinely issue whips, disobeying which may lead to varying degree of Party censure, *members are free to vote as per their conscience without fear of being disqualified from the House.*

The whip system has been a part of the 'conventionally established machinery' of the House of Commons but does not impinge upon a member's parliamentary freedom of exercising his free opinion.<sup>160</sup> The relationship between a candidate, her Party and the sponsoring union of the Party was held as unconstitutional in *Amalgamated Society of Railway Servants v. Osborne*<sup>161</sup>, where Lord Shaw held that any contract attempting to bind the MP's vote was unenforceable and void. He added that any "pledge of Party loyalty was unconstitutional and unwarrantable interference with the rights of the constituencies of the United Kingdom."<sup>162</sup>

British commentators like Adam Tomkins have said that the stronghold of internal political Party discipline should be minimized over members so that they may be allowed to perform their legislative function of "loyalty to Parliament's constitutional function of holding the government to account"<sup>163</sup>

<sup>156</sup> *Id.* at 73-73, 78, 110-117

<sup>157</sup> Philip Norton, *The Changing Face of the British House of Commons in the 1970s*, 5 *Legis. Stud. Quart.* 333, 337-342 (Aug. 1980).

<sup>158</sup> Anthony Stephen King, *British Members of Parliament, A Self Portrait*, 59 (1974).

<sup>159</sup> Graham K. Wilson, *Congress in Comparative Perspective*, 2009 *B.U.L. REV.* 827, 833-834.

<sup>160</sup> Rodney Brazier, *Constitutional Reform: Reshaping the British Political System*, 49 (1991).

<sup>161</sup> *Amalgamated Society of Railway Servants v. Osborne*, [1910] *A.C.* 87.

<sup>162</sup> P Ishwara Bhat See *Free Legislative Choice and Anti-Defection Law- A Plea for Integrated Reading*, 18 *Acad. Law Rev.*, 65, 81 (1994).

<sup>163</sup> Adam Tomkins, *Our Republican Constitution*, 137 (2005).

To get around the lack of any real penalty for dissent, Ministers have used different tactics. John Major got the ratification of the Maastricht treaty enforced by declaring it a confidence measure and thus ensuring that members vote in line.<sup>164</sup> Tony Blair declared that he would resign if MPs voted against going to war in Iraq and they thus toed the line.<sup>165</sup> Yet, backbench revolts are common. There were more dissenting votes cast by Labour MPs in the first House session of 2001 than in any other Labour first session. In the 2001 first session there were 79 revolts, in the first session in 1964 there had been none.<sup>166</sup> Even in the two Iraq war votes, 139 Labour MPs and a few Conservatives had rebelled.<sup>167</sup> Since MPs are allowed to vote as per their beliefs, government legislation in the House of Lords is defeated more often, rising from 26 during the 1970-74<sup>168</sup> to 245 in the four years from 2001-05.<sup>169</sup>

Typically in the House of Commons, a free vote is announced on specific issues. When such a vote is announced, members may vote outside Party lines.<sup>170</sup> Between 1997 to 2008, free votes were announced a total 107 times on important bills such as the Water Bill Local, the Government Bill and more recently the Human Fertilisation and Embryology Bill, etc.<sup>171</sup> None of these bills would have been passed but for the free vote. Detractors point out that even in the UK voting is not entirely free of Party control since free votes are an exception for sensitive issues rather than the norm.

<sup>164</sup> Walter Goldstein, *Europe After Maastricht*, Foreign Affairs, Vol 71, n.º 5 (Winter 1992) 117, 118-32.

<sup>165</sup> Anthony Seldon et al., *Blair 596-97* (2004), cited in Graham K. Wilson, *Congress in Comparative Perspective*, 2009 B.U.L. REV. 827, 833.

<sup>166</sup> Philip Cowley & Mark Stuart, *When Sheep Bark: The Parliamentary Labour Party 2001-2003*, 11 (PSA Elections, Public Opinion and Parties Conference, 2003), available at <http://www.essex.ac.uk/ecpr/standinggroups/parliaments/papers/cowley1.pdf>.

<sup>167</sup> *Id.* at 3.

<sup>168</sup> Alan Travis, *Peers in Power*, Guardian (U.K.), June 29, 2000, available at <http://www.guardian.co.uk/politics/2000/jun/29/lords.lordreform>. cited in Graham K. Wilson, *Congress in Comparative Perspective*, 2009 B.U.L. REV. 827, 833.

<sup>169</sup> Philip Norton, *Parliament in British Politics*, 96, (2005), cited in Graham K. Wilson, *Congress in Comparative Perspective*, 2009 B.U.L. REV. 827, 833.

<sup>170</sup> Free Votes, Parliament Information List, Reference Service Section, July 11, 2008. Available at <http://www.parliament.uk/commons/lib/research/briefings/snpc-04793.pdf>

<sup>171</sup> *Id.* at 2-6.

But despite this, MPs in the House of Commons have more freedom to exercise their conscience than their counterparts in India because of two reasons. Firstly, free votes have been declared on numerous occasions, a phenomenon almost rare in India. Secondly and more importantly, since UK does not have any anti-defection law that disqualifies MP's for voting against Party directions, dissents are more easily possible. This system also ensures a balance between Party interests and an MP's freedom of choice. Since the parliamentary systems in both countries are similar (and one evolved from the other) this is a reasonably fair comparison to draw from, presuming a neutral position on the overall role of political Parties.

If one is to purely base the comparison on Party constraints over Parliamentary voting, the British Parliament fares far better than its Indian counterpart.

### b) United States of America

Conformity with Party directives as also Party-identity based labels has been a more prevalent feature of Parliamentary systems than it has of Presidential ones.<sup>172</sup> In the American system, partisan politics had been traditionally shunned since the country believed in representation and egalitarianism.<sup>173</sup> There have been several studies conducted which examine how a Member of Parliament may strategically use her vote in favour of a particular Party and when, if necessary switch her vote.<sup>174</sup> Naturally then the role of Party activists becomes exceedingly important. Party activists influence the old rank about the potential of new members, intra-party voting, bringing new members together and solicit for their favourites.<sup>175</sup>

It has been manifested time and again in the American system that it is the duty of the legislators to represent the interest of their constituents but there is of course an inherent tension of the role of the Congressman

<sup>172</sup> Scott Ashworth and Ethan Bueno de Mesquita, *Informative Party Labels With Institutional and Electoral Variation*, *Journal of Theoretical Politics* 20(3): 251–273.

<sup>173</sup> This is evident from George Washington's Farewell Speech: *Avoid Party Politics*, available at <http://www.earlyamerica.com/earlyamerica/milestones/farewell/text.html>

<sup>174</sup> David C. King and Richard J. Zeckhauser, *Congressional Vote Options*, 28 *Legis. Stud. Quart.* 387-411 (2003).

<sup>175</sup> Geoffrey C. Layman et. al. *Activists and Conflict Extension in American Party Politics*, Vol. 104, n.º 2, (May 2010).

as a trustee v. a delegate.<sup>176</sup> The US Supreme Court has also emphasized, “*debate on public issues should be uninhibited, robust, and wide-open.*”<sup>177</sup>

The defining and very first case, which pronounced upon legislative speech, was *Bond v. Floyd*.<sup>178</sup> This case dealt with legislative disciplining of a member of the House. The Georgia House of Representatives had tried to exclude the newly elected Julian Bond (a black male), from a district in Atlanta, in view of certain unsavoury remarks he had made on the Vietnam War and draft. Bond criticised the government’s drafting policy in the Vietnam war. The House voted him out since it believed that Bond was not true to his oath of office under the Georgian Constitution.<sup>179</sup>

The Supreme Court rejected this view of the House holding that his expressed views had not violated any federal laws. In the opinion of the Court, Bond’s views did not incite the violation of any law, were protected by First Amendment Principles, and were thus unassailable by the House.<sup>180</sup> The Court observed “*while the State has an interest in requiring its legislators to swear to a belief in constitutional processes of government,*” [this] “*surely ... gives it no interest in limiting its legislators’ capacity to discuss their views of local or national policy.*” (And further), “[L]egislators have an obligation to take positions on controversial political questions.”<sup>181</sup> Most importantly the Court observed “*the interest of the public in hearing all sides of a public issue is hardly advanced by extending more protection to citizen-critics than to legislators.*”<sup>182</sup>

The Court thus endorsed its long standing belief in the age-old American model of a government typified by “*individual citizen-legislators.*”<sup>183</sup> Although Bond’s ratio only addressed the scope of a legislative body’s *disciplinary powers*, the Court’s vehement defence of legislative speech had greater significance on American Congress jurisprudence. This case was thus a landmark decision, which upheld free legislative speech.

<sup>176</sup> Robert Weissberg, *Collective vs. Dyadic Representation in The American Congress Reader*, 88, 88-98 (Steven S Smith, Jason M. Roberts, Ryan J. Vander Wielen, 2009).

<sup>177</sup> *New York Times v. Sullivan*, 376 U. S. 254, 376 U. S. 270; 385 U. S. 135-136.

<sup>178</sup> 385 U.S. 116 (1966).

<sup>179</sup> Karen Atkinson, *Constitutional Law -Free Speech- Judicial Review of Qualifications of Legislators—Bond v. Floyd*, 87 S. Ct. 339 (1966), 9 Wm. & Mary L. Rev. 245, 246 (1967).

<sup>180</sup> *Id.*

<sup>181</sup> *Bond v. Floyd* 385 U.S. 116 (1966) at 136.

<sup>182</sup> *Bond v. Floyd* 385 U.S. 116 (1966).at 135.

<sup>183</sup> *Bond v. Floyd* 385 U.S. 116 (1966) at 136-37.

*Ammond v. McGahn*<sup>184</sup> which followed Bond's ratio is another extremely important case both for the precedent it set and for the extent to which it upheld a legislator's First Amendment rights. In this case Senator Ammond had filed a suit for preliminary injunction in the District Court of New Jersey against the Democratic Caucus which had expelled her for making statements that were critical of the Caucus and its members. The most important observation of the District Court was that the Caucus as a large representative of the Senate, while expelling Ammond was exercising a "legislative power, which is normally associated with sovereignty"<sup>185</sup> and its actions were in the realm of "state action". Upholding *Bond v. Floyd*<sup>186</sup>, the court held that the actions of the Caucus had violated the Senator's First Amendment principles of free speech.<sup>187</sup> The Court also observed significantly that the Caucus had denied representation and equal protection of laws to Ammond's constituents by not allowing her into Party deliberations. The Court observed that by doing so, the Caucus had "created two classes of voters ... [o]ne ... whose Senators could ... participate fully in the legislative process ... and another class whose Senators could participate only to a limited degree."<sup>188</sup> The Court also cited *Reynolds v. Sims*,<sup>189</sup> where it had been held that "[t]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote as effectively as by wholly prohibiting the free exercise of the franchise."<sup>190</sup>

<sup>184</sup> 390 F. Supp. 655 (D.N.J. 1975). See Michael L. Stokes *When Freedoms Conflict: Party Discipline and the First Amendment*, 11 J.L. & Pol. 751, 760-770.

<sup>185</sup> *Ammond v. McGahn* 390 F. Supp. 655 (D.N.J. 1975) at 659; See also Michael L. Stokes *When Freedoms Conflict: Party Discipline and the First Amendment*, 11 J.L. & Pol. 751, 760-770.

<sup>186</sup> 385 U.S. 116 (1966).

<sup>187</sup> *Ammond v. McGahn* 390 F. Supp. 655 (D.N.J. 1975) at 659 The Court observed "[g]iven the fact that the Caucus often decides the course of legislation before it ever reaches the floor of the Senate, exclusion from the Caucus is tantamount to exclusion from the Senate."; See generally James S. Wrona and L. Francis Cissna, *Switching Sides: Is Part Affiliation a Tie that Binds?* 28 Ariz. St. L.J. 735.

<sup>188</sup> 390 F. Supp. 655 (D.N.J. 1975) at p 660.

<sup>189</sup> 377 U.S. 533, 555 (1964).

<sup>190</sup> The Third Circuit Court reversed the District Court judgment on other grounds, but the ruling that the Caucus's actions were 'state action' stands. See *Ammond v. McGahn*, 532 F.2d 325, 327, 329 (3rd Cir. 1976). See generally Michael L. Stokes *When Freedoms Conflict: Party Discipline and the First Amendment*, 11 J.L. & Pol. 751.

In *Gewertz v. Jackman*,<sup>191</sup> the District Court established that the widest possible First Amendment freedom should be afforded to legislators to express uninhibitedly their political opinion. In this case, Kenneth Gewertz an old member of the New Jersey General Assembly filed a suit against the Speaker and the Assembly Democratic Caucus challenging his expulsion from the Assembly Appropriations Committee. Gewertz claimed that he was removed because *inter alia* he did not support the Party's proposed legislations.<sup>192</sup> The Court while likening a Committee position to public employment observed that he "*may not be discharged solely for the exercise of ... constitutionally guaranteed rights of free speech and association, absent a compelling state interest.*"<sup>193</sup>

Despite the ultimate verdict, this case continued to endorse and uphold the principles of *Ammond* and *Bond* by stating that a legislator's First Amendment rights trumped caucus discipline. In this case the defendants had argued that mere removal from a legislative committee was not actionable since the sanction was not as significant as removal from the legislative assembly or from the legislative process itself. The Court rejected this argument promptly and held, "[t]he threat of removal from a powerful committee position can be every bit as chilling to the exercise of free speech as total exclusion from the Assembly."<sup>194</sup> As rightly observed by Michael Stokes, "*The type of deprivation, whether it be the denial of an aisle seat, a telephone, or non-appointment to a committee at the beginning of a legislative session, does not dictate whether the court may make a constitutional inquiry. Rather, the defendant's action is weighed when the court, in making the proper legal analysis, balances the importance of the governmental interest against the burden on the individual's rights.*"<sup>195</sup>

<sup>191</sup> 467 F. Supp. 1047, 1056 n.4 (D.N.J. 1979); See Michael L. Stokes *When Freedoms Conflict: Party Discipline and the First Amendment*, 11 J.L. & Pol. 751, 760-770.

<sup>192</sup> *Gewertz v. Jackman* 467 F. Supp. 1047, 1056 n.4 (D.N.J. 1979) at 1050-61. The Court while vehemently upholding his first amendment right refused an injunction because Gewertz had failed to show the possibility of success on merits. The Court thus accepted the defendant's notion that Gewertz would have been removed even if he had not rebelled against the Party. See James S. Wrona and L. Francis Cissna, *Switching Sides: Is Part Affiliation a Tie that Binds?* 28 Ariz. St. L.J. 735, 761-762.

<sup>193</sup> *Gewertz v. Jackman*, 467 F. Supp. (D.N.J. 1979), at 1058.

<sup>194</sup> *Id.*, at 1057.

<sup>195</sup> Micheal L. Stokes, *When Freedoms Conflict: Party Discipline And The First Amendment*, 11 J.L. & Pol. 751, 767.

Similarly in *Barley v. Luzerne County*<sup>196</sup> the US District Court of Pennsylvania upheld the First Amendment right of a legislator to switch to another political Party (different from the one on whose ticket he contested elections), upon his election.

These landmark decisions pointed out that in the US a legislator's right to free speech is equivalent to that of a citizen and that a legislator could not be removed from the legislature for exercising her freedom of expression<sup>197</sup> nor could she be removed from the Party caucus for leaking its views to the press.<sup>198</sup> A legislator could not be removed from committees either for expressing views that were at variance with the caucus to which she belonged.<sup>199</sup> Lastly another important point to address is whether the right to association of the Party caucus prevails over the right to free expression of the legislator. In the US it is a settled principle that a political Party has a right to association as a First Amendment right of its own.<sup>200</sup> But viewed in the light of the *Bond* judgment, since removal from legislature is a State action, a private body such as a Party cannot remove a member from the Legislature though it may exercise its freedom of association and exclude members from the caucus.<sup>201</sup>

Contrast this position with India. In *Ravi S. Naik v. Union of India*<sup>202</sup> the Hon'ble Supreme Court had observed as follows:

“The words “voluntarily given up his membership” are not synonymous with “resignation” and have a wider connotation. A person may voluntarily give up his membership of a political Party even though he has not tendered his resignation from the membership of that Party. Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political Party to which he belongs.”

<sup>196</sup> 937 F.Supp. 362 (1995)

<sup>197</sup> *Kucinich v. Forbes*, 432 F.Supp. 1101, 1113 (N.D. Ohio 1977).

<sup>198</sup> *Ammond v. McGahn*, 390 F.Supp. at 660.

<sup>199</sup> *Gewertz v. Jackman*, 467 F.Supp. at 1057.

<sup>200</sup> *Ripon Society, Inc. v. National Republican Party* 525 F.2d 567 (D.C. Cir. 1975) (en banc); *Democratic Party of the United States v. Wisconsin*, 450 U.S. 107 (1981).

<sup>201</sup> Micheal L. Stokes, *When Freedoms Conflict: Party Discipline And The First Amendment*, 11 J.L. & Pol., 776.

<sup>202</sup> AIR 1994 SC 1558.

In *G. Viswanathan v. Speaker, Tamil Nadu Legislative Assembly*<sup>203</sup>, the Hon'ble Supreme Court observed that “the fact of voluntarily giving up the membership of the political Party may be either express or implied”. The Supreme Court is now reviewing its position but till these decisions are overruled, the law remains as it is.<sup>204</sup>

While in the US even express actions of dissent like in the *Ammond* case did not allow the Party to expel the Senator from the Caucus let alone the legislature, in India evidence as flimsy as newspaper reports or public speeches stating that a member has shown affiliation to another Party, have been held to be sufficient ground not only for expulsion from the Party but also for expulsion from the House.<sup>205</sup> The freedom of expression of people's representatives in the US is unimpaired by Party diktats. Though a Party may discipline its members, it certainly cannot remove a member from performing her rightful legislative function.

The general theme drawn from this American jurisprudence highlights that while in other regards an individual legislator may have to fall in line with the Party/caucus priorities, in the dynamic of political free speech a member's individual choice has precedence.

### c) New Zealand

The most significant change that took place in the New Zealand election law was that the country changed from the First Past the Post system to the Mixed Member Proportional Representation system.<sup>206</sup> Commenting on this change, Geddis and Morris observed that “*the efficacy of government has not lessened, while at the same time, legislative power has been shared amongst more parties than previously, making for a more participatory and powerful Parliament.*”<sup>207</sup> In New Zealand the courts have not formally recognized the institution of a

<sup>203</sup> 1996 (2) SCC 353.

<sup>204</sup> *Amar Singh v. Union of India*; Writ Petition (Civil) n.º 317 of 2010, decided on November 15, 2010.

<sup>205</sup> See *Annexure 5* - the decisions of the Speaker at points 6. 7. 8. 9 of the Anti-Defection Orders.

<sup>206</sup> *From FPP to MMP*, Elections, New Zealand, available at <http://www.elections.org.nz/voting/mmp/history-mmp.html>

<sup>207</sup> Andrew Geddis and Caroline Morris, *All is Changed, Changed Utterly?--The Causes and Consequences of New Zealand's Adoption of MMP*, 32 Fed. L. Rev. 451, 470 (2004).

Party caucus.<sup>208</sup> Although the control exerted by the Party caucuses in New Zealand has grown over a period of time<sup>209</sup>, voting in the House in dissention of the mandate of the caucus may not be enforceable.<sup>210</sup> Most importantly expression of dissent does not lead to automatic expulsion from the House, as the case of MP Kopu of the Alliance Party would reveal. In this case Kopu broke a written pledge to vote in favour of the Party and the Alliance Party questioned her continued presence in the New Zealand parliament in view of the Parliament's privilege to regulate its own composition.<sup>211</sup> The Speaker however held that since the MP had not specifically written a resignation letter, under Section 55(1)(f) Electoral Act 1993, a letter resigning from a Party did not lead to expulsion from the House. In fact nothing in the Electoral Act, 1993 prevents an MP from voting against her Party.<sup>212</sup> Even the Electoral Integrity Act, controlling defections, the most dubious contributions of the Howard government lapsed and has been reintroduced thereafter.

#### d) Canada

In Canada an attempt to enforce Party discipline was met with much reluctance. Western Canada and Quebec demanded that their MPs act as

<sup>208</sup> Clifford Norton, *New Zealand Parliamentary Election Results 1946-1987*, (1988).

<sup>209</sup> R. Miller, *New Zealand Politics in Transition*, 135-196 (1997); E McLeay, *The Cabinet and Political Power in New Zealand* 32-33, 49, 51-77, 116-120 (1995), cited in Carter *Parliament: Caucuses, Article 9, and, Open Government - If Not, Why Not?*, 18 NZULR 99 (1998).

<sup>210</sup> *Peters v Collinge* [1993] 2 NZLR 554, 564, where Fisher J said “*There is precedent, then, for the view that a contract which purports to interfere with the exercise of fundamental constitutional rights associated with election to, and representation in, Parliament may be struck down as contrary to public policy*” cited in Carter *Parliament: Caucuses, Article 9, and, Open Government - If Not, Why Not?*, 18 NZULR 99 (1998).

<sup>211</sup> Law Commission, *The Law of Parliamentary Privilege in New Zealand - a Reference Paper* (NZLC MP5, 1996) paras 65-70. See also *In re the Awarua Seat Inquiry Act 1897* (1897) 16 NZLR 353, cited in Ross Carter *Parliament: Caucuses, Article 9, and, Open Government-If Not, Why Not?*, 18 NZULR 99, 105-106 (1998).

<sup>212</sup> Question of Privilege: Contention as to Resignation of Mrs Manu Alamein Kopu MP McGrath J J, September 10, 1997 Chairperson of the Privileges Committee, available at <http://www.crownlaw.govt.nz/uploads/Kopu.pdf>; see also P.A. Joseph, *Mrs Kopu's Challenge to MMP* NZLJ 413 (1997).

constituency delegates.<sup>213</sup> Party hopping became frequent and there were instances where MPs began to vote against their parties when they did not support the causes of the Party. MP John Nunziata voted against the Christian Liberals since they had not fulfilled an electoral promise, knowing full well that he would be removed from the Party caucus. Switching parties was viewed as a form of political dishonesty, compared to other dishonest acts such as making false promises to the electorate, false advertising to businesses to raise funds.<sup>214</sup>

An interesting point about the Canadian parliamentary system is that prior to 1974, citizens voted for candidates based on the constituencies where they stood. It is only in 1974 that Parties began to be represented (and had to be registered) when the Election Act was amended.<sup>215</sup> According to the amended Canada Elections Act 1974, once a Party was registered and it succeeded in backing a confirmed candidate, the name of the party would appear in the ballot along with that of the candidate.<sup>216</sup> Thus the induction of political Parties into the Canadian voter's consciousness, indeed their constitutional recognition, is a very recent development.<sup>217</sup> As a result of this amendment Party leaders began to wield tremendous power as they controlled the representation of members. But the Canadian Parliament does not exhibit Party control to the extent that we see in India, nor does Canada have an anti-defection law that controls freedom of association and expression. There has been criticism of ministers crossing the floor and then taking up cabinet seats.<sup>218</sup> There was also an attempt to introduce

<sup>213</sup> Desmond Morton, *A Note on Party Switchers*, 29 Canadian Parl. Rev.(2006), available at <http://www2.parl.gc.ca/Sites/LOP/Infoparl/english/issue.asp?param=174&art=1186>

<sup>214</sup> Duff Conacher, *Part Switch-Hitters-Part of a Bigger Problem: Dishonesty in Politics* VUE Weekly, January 9, 2007, available at [http://www.vueweekly.com/front/story/party\\_switch-hitters\\_part\\_of\\_a\\_bigger\\_problem\\_dishonesty\\_in\\_politics/](http://www.vueweekly.com/front/story/party_switch-hitters_part_of_a_bigger_problem_dishonesty_in_politics/)

<sup>215</sup> *Registration of Federal Political Parties* in Elections Canada available at <http://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>

<sup>216</sup> *Id.*

<sup>217</sup> See John C. Courtney, *Recognition of Canadian Political Parties in Parliament and in Law*, 11 Can. J. Polit. Sci., 33 (1978).

<sup>218</sup> David Gessow, *Crossing the Floor, Conflict of Interest and the Parliament of Canada Act*, 29 Canadian Parliamentary Review (2006) available at [http://www2.parl.gc.ca/Sites/LOP/Infoparl/29/2/29n2\\_06e\\_Gussow.pdf](http://www2.parl.gc.ca/Sites/LOP/Infoparl/29/2/29n2_06e_Gussow.pdf)

a floor-crossing amendment.<sup>219</sup> But notably, between 1921 and 2005, there have been just 229 defections.<sup>220</sup>

In the past the Canadian Parliament has announced a free vote on issues dealing with milk subsidies, much later the national flag debate in 1964 and more recently the abortion and the capital punishment issue.<sup>221</sup> In the bill renewing the trial period abolishing capital punishment for five years (1973), there was abundant cross voting as a whip free vote was announced. But even in these cases where a free vote was announced if the matter was an essential political agenda, Parties did not grant its members a free vote. For example, the New Democratic Party (NDP) did not allow a free vote to its Party members on the Abortion Bill since it was a core policy issue of the Party.<sup>222</sup> Notably, unlike in the UK, in Canada, no government has suffered defeat on the floor of the House despite the dissent of its members.<sup>223</sup>

### e) Australia

Typically conscience voting in Australia took place over sensitive issues such as euthanasia, research involving embryonic stem cells, and the abortion drug.<sup>224</sup> During these free votes, there were instances when MPs crossed the floor if their Party refused to allow them a free vote. For example, amendments were proposed to the Migration Act in August 2006. Three members of the Coalition government crossed the floor and two abstained from voting with their Party.<sup>225</sup> Finally the Prime Minister had to withdraw

<sup>219</sup> Van Der Merwe's Constitution Fifteenth Amendment Bill (Floor Crossing) <http://www.pmg.org.za/report/20061017-van-der-merwes-constitution-fifteenth-floor-crossing-swarts-constitut>

<sup>220</sup> Desmond Morton, *A Note on Party Switchers*, Canadian Parliamentary Review. Available at <http://www2.parl.gc.ca/Sites/LOP/Infoparl/english/issue.asp?param=174&art=1186>

<sup>221</sup> C.E.S. Frank, *Free Votes in the House of Commons: A Problematic Reform, Electoral Reform, Policy Options*, (1997), available at <http://www.irpp.org/po/archive/nov97/franks.pdf>

<sup>222</sup> *Id.* at 34.

<sup>223</sup> *Id.* at 35 .

<sup>224</sup> Deirdre McKeown & Rob Lundie, *Conscience votes during the Howard Government 1996–2007*, Research Paper n.º 20 2008–09, Politics and Public Administration Section, (2009), available at [http://www.aph.gov.au/library/pubs/rp/2008-09/09rp20.htm#\\_Toc221347483](http://www.aph.gov.au/library/pubs/rp/2008-09/09rp20.htm#_Toc221347483)

<sup>225</sup> Fed: Liberal MPs defy Howard to Vote Against Migration Laws, AAP General News, August 10, 2006, available at <http://www.highbeam.com/doc/1P1-127284039.html>

the Bill or face defeat in the Senate if there was to be one more defection.<sup>226</sup> It has been observed that during a free vote, members in the Australian Parliament have routinely praised the quality of debates in a non-partisan atmosphere.<sup>227</sup> And yet they have gone ahead and voted on Party lines once a whip has been issued.

The reason behind this hypocrisy is also political. In the absence of an anti-defection law, members have moved parties with legislative impunity. When a particular Bill is based on a controversial personal or religious issue, which is likely to cause splits within the Party if members are asked to vote in line, the Party leaders think it best to free the members of whips and allow them to cast a free vote, a small price compared to the loss of a member. As observed by Dean Jaensch “*A conscience vote, then, is not a case of a Party offering freedom for its members-it is a case of parties protecting themselves.*”<sup>228</sup>

Between 1955-2002 in Australia there have been 27 instances of free votes announced the House.<sup>229</sup> This number is significantly larger than India.

#### IV. Conclusion

“[t]he centrepiece of republican constitutional structure is accountability: those in positions of political power must be accountable to those over whom (and in whose name) such power is exercised.”<sup>230</sup>

A voter living in a democracy in a different part of the world with an identical parliamentary system of governance, one would have far greater access to the votes cast by an MP and in turn decisions made by her. It follows that the aspirations of the voter are more completely manifested by a representative unfettered by Party directions. Recently some parliamentary MPs (who were no longer members of their political Party and were sitting in the House as independent candidates) had to seek an interim injunction from the Supreme Court to prevent their Party from disqualifying them from

<sup>226</sup> John Warhurst, *Conscience Voting in the Australian Federal Parliament*, The Australian Journal of Politics and History, December 2008 available at [http://findarticles.com/p/articles/mi\\_go1877/is\\_4\\_54/ai\\_n31161559/](http://findarticles.com/p/articles/mi_go1877/is_4_54/ai_n31161559/)

<sup>227</sup> See e.g. M.P. Gavan O'Connor's comments during the debate on the Embryos and Human Cloning Bill, 29 August 2002, 6126, 6127 available at <http://www.aph.gov.au/hansard/rep/dailys/dr290802.pdf>

<sup>228</sup> Dean Jaensch, *Getting Our Houses in Order*, 45 (1986) cited in Warhurst, *supra* note 225.

<sup>229</sup> McKcown & Lundie, *supra* note 223.

<sup>230</sup> Adam Tomkins, *Our Republican Constitution*, 64-65 (2005).

the House for voting against the Party whip.<sup>231</sup> Such a long-arm application of the Tenth Schedule is a travesty.

In recent times there have been several instances, where there was poor attendance in the House.<sup>232</sup> Party leaders from all quarters have time and again come out and complained about how difficult it is to track members to be present and to vote in the House, once they have filled the daily attendance register.<sup>233</sup> Naturally the attendance register having been signed once in the day, their allowance is secured and MPs do not bother to sit through the session. Since an attendance register is not reflective of whether the Member was present when a particular Bill was passed, a recorded division of important votes seems to be the only solution for this as well. It is of course quixotic to suggest that every motion go through the process of division, surely all motions by which Bills are finally passed and all other matters of substantive importance ought to be conducted by division.

The importance of a political Party as a cohesion of ideas cannot be undermined. But a concern arises when the political Party has excessive control over the MP. If parliamentary expression has to be meaningful, it needs to be freed from the shackles of rigid Party control. In practice while it may be impossible to completely eliminate the influence of the Party over the MP, like UK and other jurisdictions, MPs should be allowed to freely change their opinions on matters of public importance without the legal sanction of ouster from the legislature.

In India's first past the post system an MP is really the representative of the constituency and is not a Party mascot like in the representative system. Therefore in the absence of Party lists and voting thereof, a Party's role is minimal in her election. Having been elected by the people she ought to represent the wishes of the people alone. By the same token if an MP is guilty of changing her views too often that are not in the interest of the people, it should lie with her constituents alone to evict her from the seat

<sup>231</sup> *Amar Singh v. Union of India*; Writ Petition (Civil) n.° 317 of 2010, decided on November 15, 2010; See also Press Trust of India, 'Anti-Defection Case: SC Relief for Amar Singh, Jaya Prada', The Times of India November 15, 2010, available at [http://articles.timesofindia.indiatimes.com/2010-11-15/india/28259130\\_1\\_anti-defection-law-party-whip-apex-court](http://articles.timesofindia.indiatimes.com/2010-11-15/india/28259130_1_anti-defection-law-party-whip-apex-court)

<sup>232</sup> See e.g. *Vital Stats, Parliament in Winter Session, 2009*, available at [http://www.prsindia.org/index.php?name=Sections&action=bill\\_details&id=5&bill\\_id=986&category=&parent\\_category=](http://www.prsindia.org/index.php?name=Sections&action=bill_details&id=5&bill_id=986&category=&parent_category=)

<sup>233</sup> *Sonia expresses concern over poor attendance of Congress MPs*, July 30, 2009, Available at <http://in.news.yahoo.com/139/20090730/816/tnl-sonia-expresses-concern-over-poor-at.html>

in the next election and not the Party, which has limited role to play in her actually getting elected.

If viewed in terms of institutional function, when one institution does not perform its function suitable (here the legislature) another institution has to take on the mantle of re-examining laws (the judiciary). The impact of restrictive Parliamentary procedural law is that there are no appropriate mechanisms to check the law-making function of the legislature *when the laws are being drafted*. As a result, citizens have to seek redress of post-facto corrective mechanisms. Indian Courts are known for their proactive (and sometimes overactive) role. Viewed in the light of the functional deficiency of Parliament as an institution though, the Court's role begins to seem legitimate. Parliamentary accountability thus also seems necessary to apportion equal roles of governance to different arms.

The idea of accountable voting in the Parliament thus is not just about numbers. It is about restoring the importance of debates, about truly fulfilling the directive of parliamentary privileges and most importantly about implementing a citizen's right to know.

## Appendix 1

### DIVISION (14<sup>TH</sup> LOK SABHA)

<i>S No.</i>	<i>Subject</i>	<i>Date</i>	<i>Type</i>	<i>Total vote count</i>
1.	The motion that “this House expresses its deep concern over the deteriorating law and order situation in the State of Bihar under President’s Rule and also on the situation arising out of the Chief Secretary of the State proceeding on long leave” moved by Shri Nitish Kumar, MP	02/08/05	(Motion) On the motion for adoption	Ayes: 108 Noes: 185 Abstentions: 2
2.	The adjournment motion regarding ‘failure of the Government to take action against the persons indicted by the Nanavati Commission’ moved by Shri Sukhdev Singh Dhindsa, MP	10/08/05	(Motion) On the motion for adoption	Ayes: 130 Noes: 270 Abstentions: 0
3.	Andhra Pradesh Legislative Council Bill, 2004 moved by Shri H.R. Bhardwaj, Minister of Law Justice.	15/12/05	(Bill) On the Motion for consideration and passing	Ayes: 99 Noes: 29 Abstentions: 6
4.	Constitution (One Hundred and Fourth Amendment) Bill, 2005 moved by Shri Arjun Singh, Minister of Human Resource Development and on two more occasions thereafter.	21/12/05	(Constitutional Amendment) On the motion for consideration	Ayes: 387 Noes: 10 Abstentions: 0
5.	Amendment n.º 2 to clause 2 of the Constitution (One Hundred and Fourth Amendment) Bill, 2005 moved by Prof. Vijay Kumar Malhotra, MP.	21/12/05	(Constitutional Amendment) On the motion for adoption	Ayes: 114 Noes: 287 Abstentions: 3
6.	The Constitution (One Hundred and Fourth Amendment) Bill, 2005 moved by Shri Arjun Singh, Minister of Human Resource Development	21/12/05	(Constitutional Amendment) On the motion for adoption of clause 1	Ayes: 373 Noes: 3 Abstentions: 0
7.	The Constitution (One Hundred and Fourth Amendment) Bill, 2005 moved by Shri Arjun Singh, Minister of Human Resource Development	21/12/05	(Constitutional Amendment) On the motion for adoption of clause 2	Ayes: 330 Noes: 5 Abstentions: 0
8.	Constitution (One Hundred and Fourth Amendment) Bill, 2005 moved by Shri Arjun Singh, Minister Human Resource Development. (upon being put to vote a third time)	21/12/05	(Constitutional Amendment) On the motion for passing of the Bill as amended	Ayes: 389 Noes: 0 Abstentions: 1

Cont.

<i>S No.</i>	<i>Subject</i>	<i>Date</i>	<i>Type</i>	<i>Total vote count</i>
9.	The Constitution (One Hundred and Fifth Amendment) Bill, 2006 moved by Shri Shivraj V. Patil, Minister of Home Affairs	22/05/06	On the motion for consideration	Ayes: 369 Noes: 0 Abstentions: 0
10.	The Constitution (One Hundred and Fifth Amendment) Bill, 2006 moved by Shri Shivraj V. Patil, Minister of Home Affairs	22/05/06	On the motion for adoption of clause 2	Ayes: 356 Noes: Nil Abstentions: 0
11.	Constitution (One Hundred and Fifth Amendment) Bill, 2006 moved by Shri Shivraj V. Patil, Minister of Home Affairs. On 3 occasions. (Upon being put to vote a third time)	22/05/06	(Constitutional Amendment) On the motion for passing of Bill as amended	Ayes: 372 Noes: Nil Abstentions: 0
12.	The Parliament (Prevention of Disqualification) Amendment Bill, 2006, as passed again by Rajya Sabha moved by Shri H.R. Bhardwaj, Minister of Law and Justice.	31/07/06	(Bill) On the motion for passing	Ayes: 247 Noes: 79 Abstentions: 0
13.	The motion that this House express its confidence in the Council of Ministers Moved by Dr. Manmohan Singh, PM.	22/07/08	(Motion) On the motion for adoption	Ayes: 275 Noes: 256 Abstentions: 2
14.	The motion for adoption of amendments n.° 7, 8 and 9 to the Unorganised Workers Social Security Bill, 2008 moved by Shri Santashree Chatterjee, MP	17/12/08	(Bill) On the motion for adoption	Ayes: 90 Noes: 107 Abstentions: 0
15.	The motion for adoption of Amendment n.° 10 to the Unorganised Workers' Social Security Bill, 2008 moved by Shri Santasri Chatterjee, MP	17/12/08	(Bill) On the motion for adoption	Ayes: 111 Noes: 134 Abstentions: 0
16.	The motion for adoption of amendment n.° 1 to Clause 12 to the Unlawful Activities (Prevention) Amendment Bill 2008 moved by Shri Basudeb Acharia, MP	17/12/08	(Bill) On the motion for adoption	Ayes: 28 Noes: 187 Abstentions: 0
17.	The motion for leave to introduce the Life Insurance Corporation (Amendment) Bill, 2008 moved by Shri Pawan Kumar Bansal, Minister of State for Finance.	22/12/08	(Bill) On the motion for adoption	Ayes: 124 Noes: 45 Abstentions: 0
18.	Amendment no. 224 to the motion of thanks on the President's address moved by Shri Roopchand, MP	18/02/09	(Motion) On the motion for adoption	Ayes: 46 Noes: 152 Abstentions: 0

Cont.

<i>S No.</i>	<i>Subject</i>	<i>Date</i>	<i>Type</i>	<i>Total vote count</i>
19.	Amendment n.º 215 and 218 to the motion of thanks on the President's Address moved by Shri Basudeb Acharia, MP	18/02/2009	Motion	Ayes: 47 Noes: 155 Abstentions: 0
20.	Amendment n.º 32 and 33 to the Land Acquisition Amendment Bill, 2007 moved by Shri Hannah Mollah, MP	25/02/09	Bill	Ayes: 10 Noes: 58 Abstentions: 0

## Annexure 2

Typed Copy

RASHTRIYA JANATA DAL IN PARLIAMENT

Room No. 129, Parliament House, New Delhi-110001

Phone: 23034816, Fax: 23035258

Ref No.....

Dated: 20/12/08

### THREE LINE WHIP

The following important Bills will be taken up in the Lok Sabha on Monday, the 22<sup>nd</sup> and Tuesday, the 23<sup>rd</sup> December 2008.

The Supplementary Demands for Grants (Railways), related Appropriation Bill and Resolution on RCC.

The Gram Nyayalayas Bill, 2008

The Prevention and Control of Infectious and Contagious Diseases in animals Bill, 2008.

The Code of Criminal Procedure (Amendment) Bill, 2006.

The Post Graduate Institute of Medical Education and Research Chandigarh (Amendment) Bill, 2008.

The Information Technology (Amendment) Bill, 2006.

Supreme Court (Number of Judges) Amendment Bill, 2008.

The Collection of Statistics Bill, 2008.

All Members of Rashtriya Janta Dal (RJD) in Lok Sabha are requested to be present in the House throughout the day on 22<sup>nd</sup> & 23<sup>rd</sup> December, 2008 positively and support the Government's stand.

Please Note that Voting for election of Members of (1) Employees' State Insurance Corporation (2) Coconut Development Board and (3) Coir Board will be held from 11 00 hours to 1500 hours on Monday, the 22<sup>nd</sup> December 2008 in Committee Room No. 62, First Floor, PH and therefore requested to cast your vote in favour of UPA candidates.

Sd/-

(Parm Kripal Yadav)

RJD Chief Whip

To

All Members of RJD in Lok Sabha

**Annexure 3**

Typed copy

NATIONALIST CONGRESS PARTY

Parliamentary Party Office in Parliament

126-D, 3<sup>rd</sup> Floor, Parliament House, New Delhi- 110001 Tel: 23034355,  
23035288

Sanjeev Ganesh Naik, M.P.

Chief Whip, Lok Sabha

30<sup>th</sup> July, 2009

Three Line Whip

Voting for election of 20 Members of Lok Sabha to the Committee on the Welfare of Scheduled Castes and Scheduled Tribes will be held from 1100 Hrs to 1600 Hrs on Friday, the 31<sup>st</sup> July, 2009 in Committee Room No. 62, First Floor, Parliament House, New Delhi.

So you are requested to be positively cast your vote in the election in favour of UPA candidates as per sample ballot paper to be given to you by the Congress Party staff outside Room No. 62, Parliament House.

Sd/-  
Dr. Sanjeev Naik)

All Honourable Members of NCP in the Lok Sabha

Copy for information to:

Shri Pawan Bansal, Hon'ble Minister of Parliamentary Affairs.

Shri Sharad Pawar, Hon'ble President, NCP.

#### Annexure 4

Typed Copy

BHARATIYA JANATA PARTY IN PARLIAMENT

Ph 23034823, 23034884, 23034995  
23034991, 23034819 Fax: 23016890  
E-mail bjpinparliament@yahoo.com

30<sup>th</sup> July, 2009

Three Line Whip

All BJP Members of Rajya Sabha are hereby informed that a Constitution (One Hundred Nineth Amendment) Bill 2009 will be taken up for discussion and Passing in the Rajya Sabha on Monday the 03<sup>rd</sup> August 2009.

All Members of BJP in Rajya Sabha are, therefore, requested to be positively present in the House throughout the day on Monday the 03<sup>rd</sup> August 2009 and take part in the proceedings as per the instructions of the Leader of the Party.

Sd/-  
(Smt. Maya Singh)  
Chief Whip-BJP (RS)  
*To All BJP Members of Rajya Sabha*

## Annexure 5

### Anti Defection Orders of the Speaker

<i>S. No.</i>	<i>Name of the MPs</i>	<i>Party</i>	<i>Decision of the Speaker</i>	<i>Date of Decision</i>	<i>Grounds for Disqualification</i>	<i>Decision</i>
1.	Sudarshan Das, Sahabrao Patil Dongaonkar	Congress (S)	That since the candidates had merged with the Congress (I) Party, they were well within the exception of para 4 of Tenth Schedule and were thus exempt from disqualification.	9 September 1987	N/A	Not Disqualified
2.	Lalduhoma	Congress (I)	Disqualification by voluntarily giving up membership of his original political Party.	24 November 1988	Disqualification under para 2(1)(a) of Tenth Schedule	Disqualified
3.	Usha Sinha and 29 others and 4 other petitions.	Janta Dal	Since there was unclear evidence as to whether the 'split' in the Party occurred before or after the expulsion of the said MPs, the Speaker (Rabi Ray) gave the benefit of doubt to the Respondents and deemed the split to have taken place before the expulsion. MP Basavraj Patil and five others were disqualified since his name did not appear in the list of members forming a part of the 'splinter group' as notified to the speaker. MP Banera incurred a disqualification since he claimed not to be a part of the splinter group and could thus not avail of any protection. Dr. Shakeelur Rehman had accepted a ministry in the Government and was deemed to have given up his membership if the Janata Dal. He was thus disqualified. His claim that he was a part of the JD(S) and was protected by being a part of the splinter group was termed as an afterthought and rejected by the Speaker.	14 January 1991	Voting against the Party whip, without forming a valid part of the splinter group.	Some MPs Disqualified

Cont.

<i>S. No.</i>	<i>Name of the MPs</i>	<i>Party</i>	<i>Decision of the Speaker</i>	<i>Date of Decision</i>	<i>Grounds for Dis-qualification</i>	<i>Decision</i>
4.	Ram Sundar Das, Govind Munda, Ghulam Khan, Ram Badan, A Charan Das, Suryanarayana Yadav, Ramlakhan Singh Yadav, Ram Sharan Yadav, Roshan Lal, Arjun Singh Yadav, Abhay Singh, Upendra-nath Verma, Ajit Singh, Rasheed Masood, Harpal Panwar, Satyapal Singh, Rajnath Sonkar, Rammihore Rai, Ram Awadh, Shivsharan Verma	Janata Dal	<p>There is nothing in the Constitution of India or any Acts or Rules made there under by which when a member of a Party is expelled from his primary membership; he loses the membership of his legislature Party.</p> <p>Since the word 'unattached' has not been recognized anywhere in the constitution, the word has no legal significance and does not create any obligations or rights for members who are declared unattached.</p> <p>All the decisions regarding disqualification shall operate from the date of the decision of the Speaker (Shivraj Patil) and not retrospectively.</p> <p>The Speaker through his Order may decide whether the Party had issued a whip and whether the whip was violated voluntarily. Irrespective of the expulsion of a member from primary membership of a Party he continues to be the member of the legislature Party and of the House until he is disqualified by the Order of the Speaker through a petition. Thus even if a few members had been expelled before they signed the petition for a split, they continued to be treated as members of the legislature Party, Janata Dal. Thus they formed a part of the 20 members who 'split' from the Party through their petition and since they constituted 1/3<sup>rd</sup> of the strength of the Party, they were exempt from disqualification. This logic applied in granting immunity to the Ajit Singh faction as well.</p> <p>4 Respondents who absented themselves from voting upon various pretexts of illness and poor eye-sight were rejected as frivolous and disqualified.</p> <p>As an Obiter the Speaker observed that a list of matters (apart from no-confidence and manifesto) can be made on which voting can be directed and in all other matters it need not be directed.</p>	1 <sup>st</sup> June, 1993	Only 4 members were disqualified for abstention from voting which was against the Party whip.	Some MPs Disqualified

Cont.

<i>S. No.</i>	<i>Name of the MPs</i>	<i>Party</i>	<i>Decision of the Speaker</i>	<i>Date of Decision</i>	<i>Grounds for Disqualification</i>	<i>Decision</i>
5.	Sukdeo Paswan and Mohammad Awarul Haque	Rashtriya Janata Dal	Since Nagamani and the two respondent MPs formed 1/3 <sup>rd</sup> of the strength of the Party, the split was a valid one. Since expelled members are deemed to belong to the Party from which they were expelled as per Schedule X, even an expelled MP can be counted in determining the 1/3 <sup>rd</sup> strength of the Party.	6 <sup>th</sup> Jan, 2002	N/A	Not Disqualified
6.	Mohammad Shahid Akhlaque	Bahujan Samaj Party (BSP)	The Respondent made a public statement that though he was in Bahujan Samaj Party, he had never given any slogan against Samajwadi Party and by heart he was always a 'Sipahai' (Member) of the Samajwadi Party. This was reported in several newspapers. Based on the newspaper reports and a CD recording the speech of the Respondent, he was said to have voluntarily given up the membership of his Party.	27 <sup>th</sup> Jan 2008	Paragraph 2(1) (a) of Tenth Schedule - Voluntarily giving up the membership of the Party.	Disqualified
7.	Ramakant Yadav	Bahujan Samaj Party (BSP)	The respondent had been suspended by the BSP. He thereafter tried to receive an audience with the Party chief Mayawati but was denied the same. Thereafter there were several newspaper reports that he had shown his allegiance to the Samajwadi Party and since there was no reason why so many newspapers would report a false item, he was disqualified for having voluntarily given up the membership of the House.	27 <sup>th</sup> January 2008	Paragraph 2(1) (a) of Tenth Schedule - Voluntarily giving up the membership of the Party.	Disqualified
8.	Bhalchandra Yadav	Bahujan Samaj Party (BSP)	The respondent had been suspended by the BSP. He thereafter tried to receive an audience with the Party chief Mayawati but was denied the same. Thereafter there were several newspaper reports that he had shown his allegiance to the Samajwadi Party and since there was no reason why so many newspapers would report a false item, he was disqualified for having voluntarily given up the membership of the House.	27 <sup>th</sup> January 2008	Paragraph 2(1) (a) of Tenth Schedule - Voluntarily giving up the membership of the Party.	Disqualified

Cont.

<i>S. No.</i>	<i>Name of the MPs</i>	<i>Party</i>	<i>Decision of the Speaker</i>	<i>Date of Decision</i>	<i>Grounds for Disqualification</i>	<i>Decision</i>
9.	Ale Narendra	Telangana Rashtriya Samiti	The Speaker held that the Petitioner could not prove with satisfaction that a whip was served to the Respondent to vote against the No confidence motion. Hence Schedule X could not be invoked.	23 <sup>rd</sup> Oct, 2008	N/A	Not Disqualified
10.	Harihar Swain	Biju Janata Dal	The Respondent having voted against a three-line whip issued on a no-confidence motion, he stood disqualified under paragraph 2(f) (b) of Schedule X.	10 <sup>th</sup> Dec, 2008	Paragraph 2(1) (b) of Tenth Schedule - Voting contrary to the Party whip.	Disqualified
11.	Afzal Ansari	Samajwadi Party	The Respondent contended that he had not received any three-line whip to vote in favour of the no-confidence motion and that there was no record of the same with jail authorities either, since he was in jail at the given time. He also successfully proved that he had not received any verbal intimation of the whip.	26 <sup>th</sup> Dec, 2008	N/A	Not Disqualified
12.	Kunwar Sarv Raj Singh,	Janata Dal (U)	The contention of the Petitioner was that from newspaper reports and from an advertisement to the effect, it was evident that the Respondent had left the JD (U) and joined the BSP and thus he must be said to have voluntarily resigned from the Party under the Tenth schedule. The Speaker however held that from the evidence produced this could not be proved.	21 <sup>st</sup> Jan, 2009	N/A	Not Disqualified
13.	Adv Renge Patil	Shiv Sena	The Petitioner could not prove the service of a three-line whip to the Respondent to vote against the no-confidence motion. Thus it could not be proved that he had violated the purported whip. The Tenth Schedule was not attracted.	12 <sup>th</sup> Feb, 2009	N/A	Not Disqualified

Cont.

<i>S. No.</i>	<i>Name of the MPs</i>	<i>Party</i>	<i>Decision of the Speaker</i>	<i>Date of Decision</i>	<i>Grounds for Disqualification</i>	<i>Decision</i>
14.	Raj Narayan Budholiya	Samajwadi Party	The Petitioner could not prove the service of a three-line whip to the Respondent to vote in favour of the no-confidence motion. Thus it could not be proved that he had violated the purported whip. The Tenth Schedule was not attracted.	5 <sup>th</sup> March 2009	N/A	Not Disqualified
15.	Kuldeep Bishnoi	Indian National Congress	The Respondent publicly expressed his dissent against the policies of the Indian National Congress, proclaimed that he was forming a new Party by the name Haryana Janhit Congress and severely criticized several programmes of the Indian National Congress in Haryana. Thus it was deemed that he had voluntarily given up the membership of the Indian National Congress.	10 <sup>th</sup> Sep, 2008	Paragraph 2(1) (a) of Tenth Schedule	Disqualified
16.	Jaiprakash	Samajwadi Parliamentary Party	Since the Respondent voted against the no-confidence motion, contrary to the Party whip, he was disqualified under Schedule X.	11 <sup>th</sup> Sep, 2008	Paragraph 2(1) (b) of Tenth Schedule	Disqualified
17.	Prof. S.P. Singh Baghel,	Samajwadi Party	The Respondent having voted against a three-line whip issued on a no-confidence motion, he stood disqualified under paragraph 2(i) (b) of Schedule X	15 <sup>th</sup> Sep, 2008	Paragraph 2(1) (b) of Tenth Schedule	Disqualified

Cont.

S. No.	Name of the MPs	Party	Decision of the Speaker	Date of Decision	Grounds for Disqualification	Decision
18.	Dr. H.T. Sanghiana	Bharatiya Janata Party	1. The Respondent had voted in favour of the 'civilian nuclear deal', which was against an oral Party whip issued by the BJP. Since this was an 'important direction' towards the 'motion of confidence' moved by the Prime Minister, the Respondent had violated Schedule X and was thus disqualified. To quote directly the Speaker (Mr. Somnath Chatterjee) said " <i>Apart from issuance of specific direction, a stand taken by a political Party on any important or contentious issue is expected to be known to its Members, specially the Legislators and also generally to the public at large. It is unwell to assume that the Legislators of a Party will not be aware how they are required to vote on a given occasion, when any important matter comes before the House.</i> "	3 <sup>rd</sup> Oct, 2008	Paragraph 2(1) (b) of Tenth Schedule - le - Voting contrary to the Party whip	Disqualified
19.	Ramswaroop Prasad	Janata Dal (U)	The Respondent voted against the three-line whip in the no-confidence motion and thus incurred a disqualification. His claim that he had not received the whip was not accepted due to evidence to the contrary.	3 <sup>rd</sup> Oct, 2008	Paragraph 2(1) (b) of Tenth Schedule - le - Voting contrary to the Party whip.	Disqualified
20.	Chandrabhan Singh	Bharatiya Janata Party	The Respondent absented himself from voting against the no-confidence motions, contrary to the directions of the three-line whip. The claim that he was unwell and unfit to attend the Parliament was not accepted due to lack of evidence.	5 <sup>th</sup> Dec, 2008	Paragraph 2(1) (b) of Tenth Schedule - le - Voting (abstention) contrary to the Party whip.	Disqualified

Cont.

<i>S. No.</i>	<i>Name of the MPs</i>	<i>Party</i>	<i>Decision of the Speaker</i>	<i>Date of Decision</i>	<i>Grounds for Dis-qualification</i>	<i>Decision</i>
21.	Somabhai Gandhalal Patel	Bharatiya Janata Party	The Respondent was suspended from the primary membership of the Party and it could not be proved that he had been issued any whip to vote against the Motion of Confidence. The Petitioner having failed to prove he issuance of a whip to the Respondent, the Respondent was not guilty of voting against the whip.	10 <sup>th</sup> Dec, 2008	N/A	Not Disqualified
22.	Dr. M Jagannath	Telegu Desam Party	Since the Respondent voted in favour of the no-confidence motion, contrary to the Party whip, he was disqualified under Schedule X.	15 <sup>th</sup> Dec, 2008	Paragraph 2(1) (b) of Tenth Schedule - le - Voting contrary to the Party whip	Disqualified
23.	Dr. P.P. Koya	Janata Dal (U)	The Respondent absented himself from voting against the no-confidence motions, contrary to the directions of the three-line whip. The claim that he was unwell and unfit to attend the Parliament was not accepted due to lack of evidence.	12 <sup>th</sup> Jan, 2009	Paragraph 2(1) (b) of Tenth Schedule - le - Voting (abstention) contrary to the Party whip.	Disqualified
24.	Abu Ayaz Mondal	Communist Party of India (Marxist)	The Respondent was unable to controvert newspaper reports and other circumstantial evidence which pointed to the fact that he had joined the Trinamool Congress and it was thus deemed that he had voluntarily given up the membership of the CPI(M), thus incurring a disqualification under Tenth Schedule.	27 <sup>th</sup> April, 2009	Paragraph 2(1) (a) of Tenth Schedule - le - Voluntarily giving up the membership of the Party.	Disqualified

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4. Resume of Work done by the Lok Sabha, To n.º 75- Vol II-XVII, 5<sup>th</sup> Lok Sabha, 1971-1976.
5. Resume of Work done by the Lok Sabha, 3<sup>rd</sup> and, 4<sup>TH</sup> Lok Sabha, 1962-67 and 1967-70.
6. The Public Whip, available at <http://www.publicwhip.org.uk>

7. The Congressional voting database, available at <http://projects.washingtonpost.com/congress/>
8. Resume of Work, available at <http://164.100.47.132/LssNew/secretariat/resume1414.pdf>

