PUNJAB AND HARYANA HIGH COURT

Parkash Singh Badal

Vs

Union of India

Civil Writ Petition No. 3435 of 1986

(H.N. Seth, C.J., D.S. Tewatia, R.N. Mittal, S.P. Goyal and J.V. Gupta, JJ.)

01.05.1987

JUDGMENT

S.P. Goyal, J.

1. These three petitions (Civil Writ Petitions Nos. 3065, 3268 and 3435 of 1986), which are based on identical facts and involve common questions of law, have been filed for quashing the notice dated June 13, 1986, a copy of one of which is attached as Annexure P-6, issued to the petitioners by respondent No. 6, the Speaker of the Punjab Vidhan Sabha, requiring them to show cause as to why they be not disqualified from the membership of the Punjab Legislative Assembly in terms of Article 191(2) read with paragraphs 2 and 6 of the Tenth Schedule of the Constitution of India and his order, dated July 4, 1986 (Annexure P-8) rejecting the application (Annexure P-7) of Capt. Amrinder Singh, M.L.A., wherein he claimed to be recognized as the leader of the 27 M.L.As, who were stated to have formed a separate legislative party because of the alleged split in the Shiromani Akali Dal. The attack is two prone. First, that the Constitution (Fifty-Second Amendment) Act, 1985 is *ultra vires* of the powers of the Parliament. Second, that an appropriate order having already been passed by the Speaker under paragraph 6 of the Tenth Schedule to the Constitution, its successor had no jurisdiction to ignore that order and issue the impugned notices for a fresh decision. Before embarking upon the critical examination of the many facet contentions of the learned counsel for the parties, it is essential to notice, in short, the facts and the pleas contained in their pleadings.

2. The petitioners aver that in the wake of the armed police attack on the holy precincts of Sri Harmandir Sahib (Golden Temple, Amritsar), on April 30, 1986, which was widely resented in the rank and file of Shiromani Akali Dal, a majority of the functionaries of the party, its office bearers and district Jathedars resigned from their posts; Sarvshri Parkash Singh Badal and Gurcharan Singh Tohra resigned on May 1, 1986 from the membership of the working committee and the party led by respondent No. 7 Shri Surjit Singh Barnala, the Chief Minister; two of the petitioners (Nos. 2 and 23) resigned from their Posts of the cabinet ministers and along with Sarvshri Surjan Singh Thekedar and Manjit Singh, the Vice President and the General Secretary, respectively, of the party, repudiated the leadership of respondent No. 7; and petitioner Nos. 19 and 20 relinquished the posts of District Presidents of Gurdaspur and Ludhiana units of

the Shiromani Akali Dal. Thus, there occurred a split in the Shiromani Akali Dal and a separate political party also known as Shiromani Akali Dal (Badal) consisting of the above-mentioned and other leaders and district Jathedars was formed and Shri Surjan Singh Thekedar was appointed as its Acting President and Shri Manjit Singh as General Secretary. As a result thereof, 27 M.L.As. including the 25 petitioners in the three petitions of the Shiromani Akali Dal (L) Legislature Party sent a letter on May 7, 1986 (Pony Annexure P-1) to then Speaker that they had decided to form a separate legislative group and be recognized as such and allotted separate seats, in the Punjab Vidhan Sabha. The Speaker after getting declaration from each of the signatories and having satisfied of the claim made in the said letter, recognized them as members of the separate political party and ordered the allotment of separate seats to them in the Vidhan Sabha. A copy of the said order, dated May 8, 1986 passed by the Speaker has been produced with the petition as Annexure P-3.

3. The Deputy Speaker Shri Nirmal Singh Kahlon was taken as minister in the cabinet on May 6, 1986 and the Speaker resigned from his office on May 27, 1986. The Governor of Punjab, therefore, summoned the Vidhan Sabha to meet on June 2, 1986 to elect the Speaker and the Deputy Speaker and to transact the other business. The newly formed group set up Shri Arjan Singh Litt and Dr. S. S. Mohi for the offices of the Speaker and the Deputy Speaker, respectively and a whip to vote for them was issued to the members of this group by Shri Amrinder Singh. Shri Surjit Singh Minhas, respondent No. 6 and Shri Jaswant Singh contested the offices of the Speaker and the Deputy Speaker as candidates of the original Shiromani Akali Dal and a whip was issued by respondent No. 7 to its members to vote for them. The candidates set up by the Shiromani Akali Dal headed by Shri Surjit Singh Barnala were elected as the Speaker and the Deputy Speaker securing 46 votes each even though the total strength of the Shiromani Akali Dal Legislature Party was 73 because the votes of the breakaway group were polled in favour of the candidates set up by the latter. Shri Surjit Singh Barnala, therefore, filed a petition under Article 191(2) read with paragraphs 2 and 6 of the Tenth Schedule for declaring Shri Parkash Singh Badal and 22 other members, who had violated the whip issued by him, as disqualified from being members of the Punjab Vidhan Sabha. The Speaker thereupon issued a show cause notice (Annexure P-6) to each of the said members, which led to the filing of the present petition.

4. Separate written statements were filed by respondents Nos. 6 and 7. In the written statement filed by respondent No. 6, several legal objections were taken against the maintainability of the petition and the issuance of the notices and the order Annexure P-8 were claimed to be in accordance with law whereas the order of his predecessor was stated to be without jurisdiction. In the written statement filed by respondent No. 7, apart from taking certain legal pleas by way of preliminary objections, the averments regarding the public reaction because of the police entry in the Golden Temple Complex and the resultant split in the Shiromani Akali Dal were denied. It was further averred that it was for the first time on June 30, 1986 that a news item appeared in the 'Tribune' indicating that the breakaway group was contemplating to call a session of the delegates to elect a new President; and that in spite thereof, the petitioners have not averred even in the present petition that they had quit the Shiromani Akali Dal or had formed any new political party and become its members.

5. The vires of the Amendment Act was challenged by Shri Shanti Bhushan, the learned counsel for the petitioners, on the ground that it has eroded the basic structure of the Constitution in three ways namely that clause (b) of paragraph 2 is destructive of the parliamentary democracy and the

federal structure, the two basic features and paragraphs 6 and 7 of the power of judicial review of the High Court and the Supreme Court under Articles 226, 32 and 136 of the Constitution. By way of corollary to the destructive character of paragraphs 6 and 7 of the basic feature of judicial review, it was contended that as the said provisions have sought to make changes in Chapter IV of Part V and Chapter V of Part VI, which contain Articles 136 and 226, the Bill required ratification by the Legislatures of not less than one-half of the States as envisaged by proviso to Article 368(2) of the Constitution and the same having been not done, the entire act was still-born and invalid.

6. The contention pertaining to the requirement of ratification of the Amendment Act may be examined at the outset because if it prevails, it would obviate the necessity of going into other grounds of challenge to the constitutional validity of the impugned Act. However, for the disposal of this contention, the scope of paragraphs 6 and 7 of the Amendment Act has to be determined vis-a-vis the power of judicial review of the High Court and the Supreme Court under Articles 226, 32 and 136. Sub-clause (1) of paragraph 6 which only is relevant on this matter provides that if any question arises as to whether a member of a House has become subject to disqualification under the Tenth Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final. Paragraph 7 lays down that notwithstanding anything contained in the Constitution, no Court shall have jurisdiction in respect of any matter connected with the disqualification of a member of a House under the Tenth Schedule. So far as the provision contained in paragraph 6 (1) is concerned, the contention raised by the learned counsel for the petitioners was that by making the decision of the Speaker final, the jurisdiction of the High Court under Article 226 and of the Supreme Court under Article 136 stands excluded. Shri G. Ramaswamy, the learned Additional Solicitor General of India, did not dispute the stand taken by Shri Shanti Bhushan, but took another extreme stand that the power of judicial review was confined to the question of constitutionality of the statutes and it does not cover in its purview the power to review the orders of the constitutional functionaries or other authorities under the statutes and that the Parliament is fully competent to enact a provision declaring such orders beyond the power of judicial review of the High Court or the Supreme Court. In support of his cotention, he relied on the following passage from the decision of the Supreme Court in *Brundaban Nayak v. Election Commission of India and another*[1]*,*

Para 13 :

> "Then as to the argument based on the words "the question shall be referred for the decision of the Governor", these words do not import the assumption that any other authority has to receive the complaint and after a *prima facie* and initial investigation about the complaint, send it on or refer it to the Governor for his decision. These words merely emphasise that any question of the type contemplated by clause (1) of Article 192 shall be decided by the Governor and Governor alone; no other authority can decide it, nor can the decision of the said question as such fall within the jurisdiction of the Courts. That is the significance of the words "shall be referred for the decision of the Governor". * * * * * * * * * *".

No such proposition as is canvassed by the learned counsel, in my view, can be inferred from the

observations noticed above. In the case before the Supreme Court, the controversy involved was as to whether it was the Speaker before whom, in the first instance, the complaint was to be made and thereafter it was he who was to make a reference to the Governor in terms of Article 192 of the Constitution after having satisfied that the member had incurred the disqualification mentioned in the complaint. The answer was given in the negative and while so doing, it was observed that it was the Governor alone and no other authority who was competent to decide the question of disqualification of a member under Article 192. There was, thus, no question before the Supreme Court as to whether the decision given by the Governor under Article 192 was open to judicial review by the High Court or the Supreme Court or not. By the observations made above, the Supreme Court obviously meant to rule that the question as to whether a member of the Legislature has become subject to any disqualification mentioned in clause (1) or Article 191 could be decided only by the Governor and no Court was competent to take cognizance of it.

7. The use of the word "final" *qua* any order passed by any authority under a provision of the Constitution or other statutes has always been understood to imply that no appeal, revision or review lies against that order and not that it over-rides the power of judicial review either of the High Court or the Supreme Court under Article 226 or Article 136 of the Constitution. It is not necessary to dilate on this matter any further as it stands settled authoritatively by a judgment of the Supreme Court in *Union of India v. Jyoti Parkash*[2] , wherein the provisions of Article 217(3) which provide that if any question arises as to the age of a Judge of High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final, came under consideration and the import of the word "final" was enunciated thus :-

Para 31 :

> "* * * * *.
>
> The President acting under Article 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court has jurisdiction in ... appropriate cases to set aside the order, if it appears that it was passed on collateral considerations or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But this Court will not sit in appeal over the judgment of the President, nor will the Courts determine the weight which should be attached to the evidence.
>
> Appreciation of evidence is entirely left to the President and it is not for the Courts to hold that on the evidence placed before the President on which the conclusion is founded, if they were called upon to decide the case they would have reached some other conclusion."

I am, therefore, of the considered view that the provisions of paragraph 6(1) do not have the effect of excluding the jurisdiction of the High Court under Article 226 or of the Supreme Court under Article 136 of the Constitution.

8. As regards the provision contained in paragraph 7, did not dispute Shri G. Ramaswamy, that it has the effect of the exclusion of the jurisdiction of the High Court and the Supreme Court under Articles 226 and 136 respectively in respect of any matter connected with the disqualification of a member of a House, but contended that in spite thereof the Bill did not require any ratification as canvassed by Shri Shanti Bhushan. This reasons advanced for this view shall be noticed later as it would be proper to deal with the contentions raised by Shri D. D. Thakur prior thereto, who took the stand that the provision of the said para does not exclude the power of judicial review of the High Court or the Supreme Court so far as the order of the Speaker was concerned. The argument put forward by him was twofold. First, that the word "jurisdiction" as held by the Supreme Court in *Ujjam Bai v. State of Uttar Pradesh and another*[3] , means the authority to decide and, as such, the bar contained in this paragraph only relates to the primary decision and not its review by the High Court or the Supreme Court. Second, that the words "any matter" would not include the order of the Speaker. I regret my inability to subscribe to this view. If paragraph 7 is interpreted in the manner suggested by Shri Thakur, then the provision contained therein would be rendered wholly superfluous because the jurisdiction to decide, in the first instance, has been exclusively vested in the Speaker and his order has also been made final, which necessarily means that no Court would have the jurisdiction to take cognizance of any question relating to the disqualification of a member of a House under the Tenth Schedule. Moreover, if the intention was not to exclude the jurisdiction of the High Court and the Supreme Court under Article 226 or Article 136, there was no necessity to incorporate the *non obstante* clause, that is, "notwith-standing anything contained in the Constitution", in this paragraph. Under the Constitution, it is only the High Court and the Supreme Court which have the jurisdiction to issue writs and review the decisions of the Courts and Tribunals subordinate to them. Obviously the incorporation of the *non obstante* clause, therefore, was meant to exclude the jurisdiction of the High Court and the Supreme Court and if that is so the word "matter" has to be necessarily understood to include as well the order of the Speaker passed under paragraph 6. There is, thus, no escape from the conclusion that paragraph 7 has the effect of excluding the jurisdiction of the Supreme Court as well as the High Court under Articles 136 and 226 in respect of any matter connected with the disqualification of a member of a House under the said Schedule.

9. Shri Ramaswamy put forward two reasons for his contention that the impugned Bill did not require ratification. Firstly, he argued that the said proviso would not come into play unless the proposed amendment seeks to make any change in Article 226 or Article 136 of the Constitution itself. The argument though on the face of it quite attractive, yet loses all its lustre when critically examined. If the words "if such amendment seeks to make any change in Chapter IV of Part V or Chapter V of Part VI are interpreted in the manner suggested, it would enable the Parliament to completely nullify the provisions of Articles 136 and 226 by making a provision in the statute concerned excluding the jurisdiction of the Supreme Court and the High Court without making any amendment in the articles. Secondly, it was contended that in pith and substance the Bill was meant to prescribe an additional disqualification of a member of a House by effecting amendments in Articles 101, 102, 191 and 192 and the indirect encroachment upon Articles 136 and 226 of the Constitution being incidental and insignificant, the Bill was not required to be ratified before it was presented for assent to the President. Reliance for this proposition was placed on *Prafulla Kumar Mukherjee and others v. Bank of Commerce Ltd. Khulna*[4]*, Shankari Prasad Singh Deo and others v. The Union of India and others*[5]*,* and *Sajjan Singh v. The State of Rajasthan, AIR 1965 Supreme Court 845.* In Prafulla Kumar Mukherjee's case (supra), the

question involved was as to whether the Bengal Money-lenders Act was *ultra vires* the Provincial Legislature and its validity was upheld with the following observations :-

> "The pith and substance of the Act being money lending it comes within Schedule 7, List II, Item 27, Government of India, Act, and, therefore, is within the competence of the Provincial Legislature and is not rendered invalid because it incidentally trenches upon matters reserved to the Federal Legislature namely promissory notes and banking in Schedule 7, List I, Items 28 and 38, Government of India Act."

The pith and substance theory in the said case was, thus, invoked to find out the competence of the Provincial Legislature in a situation where the Provincial and the Federal Lists overlapped each other upon certain matters enumerated therein. This decision, therefore, cannot possibly lend any support to the contention of the learned counsel.

10. In Shankari Prasad Singh Deo's case (supra), the Constitution (First Amendment) Act, 1951, whereby Articles 31-A and 31-B were inserted in the Constitution, was under challenge and one of the arguments advanced was that as the newly inserted Articles seek to make changes in Articles 132 and 136 in Chapter IV of Part V and Article 226 in Chapter V of Part VI, they require ratification under clause (b) of the proviso to Article 368 and not having been so ratified, were void and unconstitutional. The contention was negatived in the following terms :-

> "It will be seen that these articles do not either in terms or in effect seek to make any change in Article 226 or in Articles 132 and 136. Article 31-A aims at saving laws providing for the compulsory acquisition by the State of a certain kind of property from the operation of Article 13 read with other relevant articles in Part III, while Article 31-B purports to validate certain specified Acts and Regulations already passed, which, but for such a provisions, would be liable to be impugned under Article 13. It is not correct to say that the powers of the High Court under Article 226 to issue writs for the enforcement of any of the rights conferred by Part III or of this Court under Articles 132 and 136 to entertain appeals from orders issuing or refusing such writs are in any way affected. They remain just the same as they were before : only a certain class of cases has been excluded from the purview of part III and the Courts could no longer interfere, not because their powers were curtailed in any manner or to any extent, but because there would be no occasion hereafter for the exercise of their powers in such cases."

11. In Sajjan Singh's case (supra), the validity of the Constitution (17th Amendment) Act, 1.964, was challenged on a similar ground that the requirements of the proviso to Article 368 were not complied with. By the Amendment Act the Parliament sought to deny the right of challenge to the Agrarian Reforms Acts on the ground of the violation of the fundamental rights contained in Chapter III. Though the jurisdiction of the Supreme Court or the High Court was not directly affected in any manner, yet it was contended that it has the effect of indirectly curtailing the same. The contention was overruled with the following observations :-

> "It is true that as a result of the amendment of the fundamental rights, the area over which

the powers prescribed by Article 226 would operate may be reduced, but apparently, the Constitution makers took the view that the diminution in the area over which the High Courts' powers under Article 226 operate, would not necessarily take the case under the proviso."

12. As a matter of fact, when the fundamental right itself is taken away, the question of curtailment of the powers of the High Court or the Supreme Court as held in Shankari Prasad Singh Deo's case (supra) does not arise because there would be no occasion thereafter for the exercise of their powers in such cases. But all the same, support was also sought from the pith and substance theory in Sajjan Singh's case (supra) for rejecting the contention that the Constitution (17th Amendment) Act required ratification by one-half of the States as envisaged by the said proviso. The observations in this regard read as under :-

"Thus, if the pith and substance test is applied to the amendment made by the impugned Act, it would be clear that Parliament is seeking to amend fundamental rights solely with the object of removing any possible obstacle in the fulfilment of the socio-economic policy in which the party in power believes. If that be so, the effect of the amendment on the area over which the High Courts' powers prescribed by Article 226 operate, is incidental and in, the present case can be described as of an insignificant order. The impugned Act does not purport to change the provisions of Article 226 and it cannot be said even to have that effect directly or in any appreciable measure. That is why we think that the argument that the impugned Act falls under the proviso, cannot be sustained. It is an Act the object of which is to amend the relevant articles in Part III which confer fundamental rights on citizens and as such it falls under the substantive part of Article 368 and does not attract the provisions of clause (b) of the proviso. If the effect of the amendment made in the fundamental rights on Article 226 is direct and not incidental and is of a very significant order, different considerations may perhaps arise. But in the present case, there is no occasion to entertain or weigh the said considerations. Therefore, the main contention raised by the petitioners and the interveners against the validity of the impugned Act must be rejected."

13. The constitutional amendments, subject-matter of the said two Supreme Court decisions, were obviously of a different nature and did not have any effect on the jurisdiction of the Supreme Court or the High Court directly or indirectly because the right itself had been curtailed or taken away. On the contrary, in the present case an additional disqualification has been provided and the jurisdiction to decide any question relating to this matter has been vested in the Speaker whose decision has been made final by enacting paragraph 7. The Speaker is seized of the matter when a question is raised that any member has incurred the disqualification under the Tenth Schedule. He is, therefore, required to give a decision on a disputed question involving a very valuable right of an elected member of the Lok Sabha or the Vidhan Sabha. Obviously the decision of the Speaker would be amenable to the jurisdiction of judicial review of the High Court and the Supreme Court but for the provision contained in paragraph 7 in view of the

decision of the Supreme Court in Jyoti Parkash's case (supra) wherein it was held that the President acting under Article 217(3) performs a judicial function of grave importance under the scheme of the Constitution. The conclusion is, therefore, irresistible that by enacting paragraph 7 the powers of the Supreme Court and the High Court under Articles 136 and 226 respectively have been directly affected and taken away so far as the disqualification of a member of the Lok Sabha or the Vidhan Sabha under the Tenth Schedule is concerned.

14. As the amendment contained in paragraph 7 of the Tenth Schedule was not got ratified by one-half of the States in terms of the proviso to clause (2) of Article 368, the same is held to be *ultra vires* and unconstitutional.

15. The question which still remains to be determined is as to what would be the effect of the paragraph 7 having been declared unconstitutional on the remaining provisions of the Fifty-Second Amendment Act. Shri Shanti Bhushan, the learned counsel for the petitioners, argued that the said paragraph being an integral part of the Amendment Act, the whole Act has to be struck down. The answer to the question, however, does not depend on the fact whether the provisions struck down is an integral part of the Amendment Act or not. What is to be seen is as to whether the remaining portion of the Act would be workable without paragraph 7 or not. The working of the remaining provisions of the Tenth Schedule is in no way dependant on paragraph 7. The purpose of the said provision is to lay down an additional disqualification and the authority to determine the question if any member has incurred the disqualification or not is named in paragraph 6. Even if the provisions of paragraph 7 are omitted, it would not affect the working of the other provisions of the Tenth Schedule and the only effect would be that the order of the Speaker would become amenable to the jurisdiction of the Supreme Court and the High Court under Articles 136 and 226. Therefore, whole of the Amendment Act would not be liable to be struck down because of paragraph 7 having been declared unconstitutional.

16. As noted above, the attack against the provisions of clause (b) of paragraph 2 is that its provisions are destructive of the parliamentary democracy and the federal structure, the two basic features of the Constitution So far as the federal structure of the Constitution is concerned, the argument out forward by Shri Shanti Bhushan was that a directive can be issued by the President of an all India party, say the Janta Party under the said provision to the party legislators in Karnatka to support a Bill moved by Bhartiya Janta Party to adopt Hindi as the official language of the State. The members would be bound to obey the direction or otherwise entail disqualification. The provision thus results in the abdication of the functions of the duly elected representatives of the people of the State in favour of an outside agency. The federal structure of the Constitution means and implies that the areas of operation of the States and the Union Government are defined under the Constitution and any law passed in transgression thereof by the Parliament or the State Legislature is liable to be struck down as *ultra vires* of the Constitution. It passes my comprehension as to in what manner the provisions of clause (b) of paragraph 2 interfere with the federal structure of the Constitution. If the Bill moved by the Bhartiya Janta Party member is adopted by the Legislature on the direction of the President of the ruling party it can be said that the right of the members to vote according to their choice or wisdom was interfered with. But by no stretch of reasoning it can be said that the area of operation of the State Legislature was interfered with thereby. The contention raised, therefore, appears to be devoid of any merit.

17. In view of the Full Court decisions of the Supreme Court in *Keshwananda Bharti v. State of Kerala*[6], and the Constitution Bench decision in *Indira Gandhi v. Raj Narain*[7], it has been settled beyond dispute that the democratic set up is one of the basic features of the Constitution. The provisions of clause (b) are said to be destructive of the democratic set up inasmuch as it denies the right of freedom of vote according to his wisdom and conscience to a member of the House which is claimed to be the very essence of parliamentary form of democracy adopted by the Indian Constitution. Besides referring us to the views of Herman Finer, Mr. K. C. Wheare and Mr. Robert White, the learned counsel strongly relied on the comments of Mr. N. A. Palkhivala, a eminent jurist of India in his book "Our Constitution Defaced and Defiled (1974 Ed.)" and the observations of Lord Shaw of Dunfermline in *Amalgamated Society of Railway Servants v. Osborne*[8], Shorn of details, observations of Lord; relied upon read thus :-

> "Take the testing instance; should his view as to right and wrong on a public issue as to the true line of service to the realm, as to the real interests of the constituency which has elected him, or even of the society which pays him, differ from the decision of the parliamentary party and the maintenance by it of its policy, he has come under a contract to place his vote and action into subjection not to his own convictions, but to their decisions. My Lords, I do not think that such a subjection is compatible either with the spirit of our parliamentary constitution or with that independence and freedom which have hitherto been held to lie at the basis of representative government in the United Kingdom.
>
> * * * * *
>
> * * * * *
>
> It would be superfluous to note in detail how deeply embedded this principle as in the law of England on the subject of the parliamentary government. On the subject of the predominating consideration Coke remarks (4 Inst. 14).... And it is to be observed though one be chosen for one particular country or brought, yet when he is returned and sits in Parliament he serveth for the whole realm."
>
> * * * * *
>
> * * * * *
>
> It is no doubt true, my Lords, that the public records and the Statute Book show that the protections which were thrown around freedom were largely in the shape of securing the safety of electors and constituencies in the exercise, without interruption, constraint, or corruption, of the franchises they enjoyed. But all this would have been a mockery if, after purity and freedom had been enjoined amongst electors and constituencies, the representative so elected was not himself to be in the possession of his freedom in vote, advice, and action - not to be free, but to be bound, bound under a contract, to submit these, for salary and at peril of loss, to the judgment of others.
>
> * * * * *

* * * * *

For the people having reserved to themselves the choice of their representatives, as the fence to their properties, could do it for no other end but that they might always be freely chosen, and so chosen freely act and advise, as the necessity of the commonwealth and the public good should upon examination and mature debate be judged to require.

* * * * *

* * * * *

In brief, my opinion according is; The proposed additional rule of the society that "all candidates shall sign and respect the conditions of the labour party, and be subject to their 'whip', the rule that candidates are to be "responsible to and paid by the society," and, in particular, the provision in the constitution of the labour party that "candidates and members must accept this constitution, and agree to abide by the decision of the parliamentary party in carrying out the aims of this constitution", are all fundamentally illegal, because they are in violation of that sound public policy which is essential to the working of representative government.

* * * * *

* * * * *

Still further, in regard to the member of parliament himself, he too is to be free; he is not to be the paid mandatory of any man, or organisation of men, nor is he entitled to bind himself to subordinate his opinions on public questions to others, for wages, or at the peril of pecuniary loss; and any contract of this character would not be recognized by a Court of law, either for its enforcement or in respect of its breach.

* * * * * *

* * * *."

18. Mr. Palkhivala denounced the measures to prevent defection which was under consideration of the Parliament then in the following terms -

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

19. In Osborne's case (supra), Amalgamated Society of Railway Servants, a Society registered under the Trade Union Act, framed a rule authorising it to levy contribution from members for

the purpose of securing parliamentary representation. Another rule provided that all candidates to be financed by the Society shall sign and accept conditions of the Labour Party and be subject to their whip. The judgment of the Court of Appeal striking down the said rule was affirmed by the Earl of Halsbury and Lords Macnaghten and Atikinson on the ground that a rule which purports to confer on any trade union registered under the Act of 1871 a power to levy contributions from members for the purpose of securing parliamentary representation, whether it be an original rule of the union or a rule subsequently introduced by amendment, is *ultra vires* and illegal and by Lord James of Hereform because one of the rules in question would bind a member of Parliament to answer the whip of the Labour Party. It was only Lord Shaw of Dunfermline who affirmed the decision on the constitutional ground that certain rules of the Society were fundamentally illegal, being in violation of that sound public policy which is essential to the working of a representatiive government as is evident from the following passage in the judgment :-

> "It is in these circumstances, my Lords that I find myself compelled to consider this appeal upon the other ground taken, involving an examination of the conditions which accompany the payment under the Constitution of the Labour Party, namely the ground that the contributions are to be devoted to the payment of members of Parliament who accept the same under obligations inconsistent with our parliamentary constitution and contrary to public policy. As, however, my Lords, I stand alone in this course and as accordingly my view would not be considered as entering into the ratio of the judgment of your Lordships' House as a whole, I shall content myself with a brief statement."

The observations of Lord Shaw were in the nature of an *obitor dicta* as the primary question before the Court was the validity of the rule empowering the levy of contribution from members for the purpose of securing parliamentary representation and the same was struck down being beyond the scope of the activity of the Society. Otherwise also the views expressed by Lord Shaw have to be understood in the context in which those were made. The validity of the levy in the alternative was challenged on the ground that a candidate after election would not be bound by any undertaking or a contract imposing a mandate on his conduct as a member of the Parliament for pecuniary considerations. It was on this aspect of the matter that Lord Shaw made the above quoted observations. A contract or undertaking to bind himself to the mandate of any society in consideration of pecuniary help in the contest of election would certainly be void being against the public policy because the vote of a member of the House cannot be purchased or sold for pecuniary consideration. The point thus being entirely different in Osborne's case (supra), the observations made by Lord Shaw would provide no guidance to judge the validity of constitutional provision providing disqualification of a member of the House and as such reliance on those observations was wholly misplaced.

20. The views expressed by Mr. Palkhivala and noticed above deserve due consideration, he being a jurist of undisputed eminence, but it is difficult to subscribe to his views in the face of the report of the Committee constituted by the Parliament which consisted of men of no less eminence as jurists and political thinkers. The said Committee had amongst its members the

Union Law Minister, Sarvshri H. N. Kunzru, C.K. Daphtary, M. C. Satalvad and Mohan Kumaramangalam and the leading political thinkers belonging to the various political parties such as Professor N. G. Ranga, N. C. Chatterjee, Madhu Limaye and Bhupesh Gupta and so on and so forth. On the question of legal and constitutional remedies against defection, the Committee had recommended as under :-

> "Rendering a defector liable to incurring disqualification :-
>
> Articles 102(1)(e) and 191(1)(e) of the Constitution empower Parliament to make a law providing for disqualification a person for being chosen as, and for being, a member of either House of Parliament or of the State Legislative Assembly or Legislative Council. As standing for election to Parliament or State Legislatures is only a statutory as distinguished from a fundamental right, it is open to Parliament to impose such restrictions or conditions on the exercise and enjoyment of that right as it considers necessary or reasonable in public interest. On that basis, it is possible to provide in a special legislation that a legislator who renounces the membership of or repudiates his allegiance to a political party shall be disqualified from continuing as a member of Parliament/State Legislature. He will nevertheless, be free to stand for election again if he so wishes, and to sit as a member in case he gets elected. Where, however, a legislator defects for a pecuniary advantage or for an office of profit an element of aggravation enters into his action which, we feel, has to be visited with greater severity. This may be done by providing that in addition to being disqualified from continuing as a member of Parliament/State Legislature, he will also be disqualified from being chosen as a member of Parliament/State Legislature for a particular period. In this context, we consider the term "office of profit" as used in article 102 and 191 to be inclusive of ministership (as is evident from the explanation contained in clause (2) of that article); hence, defection for the sake of ministership can, without difficulty, be brought under the aggravated category."
>
> "If any person who has been elected as a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State and who was allotted the reserved symbol of any political party in respect of such election renounces (whether by words, conduct or in any other manner) after the said election allegiance to, or association with, such political party, he shall upon such renunciation, be disqualified for being a member of the House of Parliament, Legislative Assembly or Legislative Council to which he was so elected."

21. The ugency and the need of the law to prevent defections was accepted by all the political parties implicitly and without reservation as is evident from the fact that the Bill was passed in both the Houses of the Parliament without a single vote of dissent. Though there was some difference of opinion between the learned counsel for the parties as to the true status of a member of Parliament, i.e., whether he was a delegate of his political party or representative of the constituents, but even if, it is accepted, as advocated by Mr. Shanti Bhushan that a member is representative of the constituents, it would necessarily mean that the members of the House truly represent the will of the people and in that sense Fifty-Second Amendment is deemed to have

been enacted with unanimous will of whole of the nation. How then a measure can be said to have the effect of eroding parliamentary democracy.

22. There now remains to be considered the theoretical aspect of the matter as to how far the member has absolute right of vote and whether it is essential feature of the parliamentary form of democracy. The democracy in its broadest connotation means the rule by the majority. There are various forms of Governments set up in different countries but all of them are claimed basically to be democracy. Even the U.S.S.R. where one party system prevails claims itself to be a democratic republic. India by the large had adopted democracy as prevalent in United Kingdom. The Parliament consists of the elected members of the people which is the supreme Legislative Body. It is now accepted at all hands that for the effecitive functioning of the Parliament and governance of the country, political parties art not only a reality but indispensable. The existence and importance of the political parties and the manner of functioning of democracy in India was described thus in a recent decision by the Supreme Court in *Kanhiya Lal Omar v. R.K. Trivedi and others*[9], :-

> "It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratice form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, dues give rise to an unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westiminister type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis in other words, "no systematized differences and unresolved conflicts." That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-Second Amendment) Act, 1985, there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country."

23. Political Parties exist because the people wish to see the Government of the country carried on according to a particular policy. Where the Legislature is composed chiefly of independents or a number of small parties, no government can be certain of support. The electors, therefore, do not vote for a candidate but usually for a party with some exception here and there. The primary

consideration before the electors is as to which party is to be voted to power and not independents. The party is voted to power not for carrying on the established system by collection of revenue and drawing on the consolidated funds but to put into practice its avowed policies on all matters of national concern and to translate into action the aspirations of the electors of social and economic justice to the people at large. To elucidate how can it be achieved and in what manner the Parliament functions and what is the importance of an individual member of a political party, I can do no better than to quote what the modern writers have to say in this regard. Professor Harold J. Laski in his book "Parliamentary Government in England" said :-

> "What is the House of Commons for ? Until we are clear about its purposes, we cannot really understand its significance. After all to give supreme legislative power to a miscellaneous body of 615 men and women, mostly amateurs in politics, would not produce a successful legislative assembly. The secret lies in the way in which the House of Commons is organized and the ends for which that organization is applied. Above all, it is important to realize that the House of Commons is not an exact mirror of the interests and opinions of the nation. If it were, it could not possibly perform its work. For those opinions and interests are so various in their formidable complexity that any House which sought to find any effective place for a considerable number of them would be too atomic in character to be capable of coherent policy. The life of the House of Commons depends upon its representation only of such predominant strands of general public opinion as will, normally, enable a Government to be formed behind which there is an effective majority. Thereby that Government is able to inject a stream of continuous tendency into affairs. The business of making a Government and providing it, or refusing to provide it, with the formal authority for carrying on the public business is the pivotal function of the House of Commons upon which all other functions turn.
>
> It means, of course, that the life of the House of Commons is necessarily lived in terms of the party system. Parties are the basis upon which the organisation of the House for coherency is made possible; and the member of the House of Commons must, with very few exceptions, be a good party man if it is to do its work adequately. The philisopher in his study may repine at this necessity. He may insist that this involves the sacrifice of individual conscience to party allegiance. He may argue that it leads members blindly into the division-lobbies on matters about which they have not even heard the debates in the chamber. He may write angirly, for reasons I shall discuss later, about Cabinet dictation in the House. The facts are quite different from these closet abstractions. The number of times when an average member feels inclined to vote against his party, especially when it is in office, is pretty small; and the evidence seems to show that when the impulse as to vote is an urgent one, he obeys it. It is foolish to imagine that, in matters of debate, a member must make up his mind upon each, separate item the House decides. The House is a body for getting business done; the member's task is to be aware of large tendencies and to be on hand to support those the general direction of which he broadly approves. If he has so nice a conscience that a scrupulous examination of mostly technical minutias is the necessary preamble to his vote, the proper comment upon his attitude is that he is not

by temperament suited to be a member of a legislative assembly."

Sir, Ivor Jennings in his book "Cabinet Government" observed :

> "The house of Commons is not composed of individual members, each of whom takes thought about the desirability of each proposal and votes accordingly. The House of Commons consists of parties. The Government, as a party authority, has control over one or more of them. It appoints 'whips' and pays many of them out of public funds. It is their function to see that the members of the party attend the House and support the Government. The Government's control over its majority is substantial. To vote against the Government is to vote against the party. To rebel against the Government is to leave the party.
>
> A successful candidate is almost invariably returned to Parliament not because of his personality nor because of his judgment and capacity, but because of his party label. A good candidate can secure a number of votes because he is good; a bad candidate can lose a few because he is bad. But his appeal is an appeal on his party's policy. He asks his constituents to support the fundamental ideas which his party accepts. His own electioneering is far less important than the impression which his party creates in the minds of the electors. They vote for or against the Government or for or against the party to which he belongs. The member of Parliament is thus returned to support a party."

Herman Finer, while discussing the views of John Stuart Mill opined thus :-

What is missing from this analysis ? The factor which today is of the most importance : the political party. And much of the essay on Representative Government is stone-dead for the same reason : the omission of political parties.

It is clear that discussion after the rise of parties must proceed upon entirely different lines, for the whole relationship of the elector to the legislature has been altered. The parties have become recognizable entities, secure of a large body of steady loyaly. These are the bodies which have applied themselves to the task Mill ascribes to the constituents; they search out qualities among men and ascertain the value of policies. They make or endorse the nominations. The caucus or the primary nominates on the basis of party membership and party program. The constituents expect the member to follow the instructions of the party whip. The party organization itself disciplines the member. The old time discussion is, therefore, out of date." (Page 97, The Theory and Practice of Modern Government).

24. With the tremendous growth of population and the development of human resources, the horizon of governmental functions has also assumed enormous proportions. In order to fulfil the promises made to the electors and to translate into action its avowed policy of economic and social justice, the party in power has to undertake lot of legislative measures. If the leader of the House is not sure of the support of the majority members of his party before hand and the matter of voting is left to the individual choice of the party members at the floor of the House, it would almost be impossible to get going with the heavy legislative work and may be that it fails to enact any legislative measure of substance. To co-ordinate the functioning of the legislative party effectively and efficiently whips are appointed not only to work as intermediaries between the

members and the Cabinet but they are also responsible to see that sufficient number of the party legislators attend the House and are available to support the measure. If each member is allowed the liberty to vote according to his own notion, the Government may not be able to enact any measure because of the uncertainty it will create and the paucity of time and the very purpose of the governmental set up would thereby be defeated resulting in complete chaos. For effective and purposeful governance of the country, individual liberty and freedom of vote of legislators, therefore, has to be regulated and curtailed in the large interest of the nation and the country.

25. My learned brother Tewatia, J. in his laborious and elucidating judgment has opined that provisions of paragraph 2(b) as framed, would be destructive of the democratic set up inasmuch as a member of the House is denied free right of speech and vote and has, therefore, suggested the reading down of this provision to save it from the vice of unconstitutionality. For this opinion, he has relied on various considerations, first of them being the intent and purpose of the Parliament in the enactment of the Fifty-Second Amendment. To find out the intent and purpose of the Parliament, it would be profitable to refer to the report of the Committee on Defections, reproduced below, which led the Lok Sabha to pass unanimously a regulation to set up a High Level Committee to consider the problem of defections :-

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

The purpose in enacting the Fifty-Second Amendment, therefore, was not only to stabilise the legally elected government and to prevent the political immorality and corruption, but also to make them effective. If the provision is read down, as suggested, the main purpose of the amendment would be defeated. The making of the government formed by the majority party stable would serve no purpose if it is not able to work effectively and carry out the party's policies on social and economic issues for which they are supposed to have been voted to power by the electorates. The provision shall also fail to prevent the political immorality and corruption because corruption is not confined only to the lure of ministerial berths or some other public offices, but can also take place for other considerations. What would be the use of a member

remaining in the party if by joining hands in voting with the opposition he gets a prestigious measure on the avowed economic policy of the party defeated on accepting considerations other than the ministerial berth or public office.

26. Apart from the provisions of the Constitution, the Lok Sabha and the Ministry, in carrying out their functions, have to observe a large number of unwritten conventions. There is no provision in the Constitution which requires the President to appoint a leader of the majority party as Prime Minister, or the one requiring the cabinet of the majority party to resign if a money Bill sponsored by it is defeated. These matters obviously are guided by well-known conventions. Similarly, it is a well established convention that if any important bill on policy matter is defeated, the cabinet usually resigns. As noticed by Cecil S. Emden in his book "The People and the Constitution", a convention has grown up, though it is not altogether of a rigid character, for members to retire or to seek re-election, if they change their party allegiance or their view regarding some vital political issue. Even in the eighteenth century, conscientious scruples occasionally led members to resign their seats on altering their political tenets. So, by the proposed amendment, whatever was expected to be achieved by convention, is sought to be enforced by letter of law when conventions failed to achieve the desired results and the menace of defections grew to such enormous proportions as to threaten the very existence of democratic set up.

27. Apart from relying on the intent and purpose of the Fifty-Second Amendment, two more reasons were advanced for reading down the provisions of clause (b) of paragraph 2; one that if the member is only to endorse the decision taken outside the House by a political party, he would be rendered simply a rubber-stamp having no volition of his own on the floor of the House and, second, that the direction issue by the political party would be violative of the right of free speech of the member guaranteed under Article 105 of the Constitution. I have already recorded my reasons for the justification of the regulation and curtailment of the right of a member to vote on the floor of the House. Apart from those reasons, before a Bill is moved by the party, it is expected to have been discussed in the party forum where the members of the House also get full chance to put up their view point. Once the party has taken a decision, the member is expected to follow the party line in the House and support the Bill. If still he is unable to reconcile, he can give up the seat to which he got elected on the party ticket and seek re-election. Instead, if the course suggested by brother Tewatia, J. is adopted, it would lead to chaos and result in the destruction of the democratic set up rather than strengthening it.

28. So far as the right of a member under Article 105 is concerned, it is not an absolute one and has been made subject to the provisions of the Constitution and the rules and standing orders regulating the procedure of Parliament. The framers of the Constitution, therefore, never intended to confer any absolute right of freedom of speech on a member of the Parliament and the same can be regulated or curtailed by making any constitutional provision, such as the Fifty-Second Amendment. The provisions of paragraph 2(b) cannot, therefore, be termed as violative of the provisions of Article 105 of the Constitution.

29. Yet, another argument, has been put forward that the House, at times, has to consider the motion for impeaching high constitutional functionaries like President of India and Judges of the Supreme Court, which involves exercise of judicial functions of considerable magnitude by the House. In such matters, no whip can be or ought to be issued to its members. With respect, I fully

endorse the view expressed that possibly no whip ought to be issued to the members when the House is to perform a Judicial function. Even if a whip is issued and a decision is taken as a result thereof, such decision would be open to judicial review in the High Court or the Supreme Court. So far as the election of the Speaker or the Deputy Speaker is concerned, it is of vital importance to the party in majority as a hostile Speaker can create lot of problems for the majority party to carry out its legislative programmes. Moreover, if a candidate set up by a majority party is defeated, it is such an issue that the party would be morally bound to resign or to seek a fresh mandate of the electorate to remain in power. The content, manner or mode of the whip to be issued by any political party to its members and the way in which it is to be followed and carried out by them, are all matters which are in the exclusive domain of the party and not justiciable. The party concerned obviously would be guided in this regard by the political sagacity and wisdom and the reaction which it might evoke amongst its own ranks or the public at large. The fear that any member of the political party can be nominated as a whip even if he may have no concern with the State or the Legislature is only imaginary because as stated by Carl J. Friedrich in his book "Constitutional Government and Democracy", chief whip and the whips are appointed from amongst the members of the House holding important offices.

30. Again, the principle of reading down a statute to save its constitutionality cannot reasonably be involved in the present case.

When can the principle of reading down be invoked, was explained in the majority judgment in *Minerva Mills Ltd. and others v. Union of India and others*[10] thus :

> "The principle of reading down the provisions of a law for the purpose of saving it from a constitutional challenge is well-known. But we find it impossible to accept the contention of the learned counsel in this behalf because, to do so will involve a gross distortion of the principle of reading down, depriving that doctrine of its only or true rationale. When words of width are used inadvertently. The device of reading down is not to be resorted to in order to save the susceptibilities of the law makers, nor indeed to imagine a law of one's liking to have been passed. One must at least take the Parliament at its word when, especially, it undertakes a constitutional amendment."

So, the principle can be invoked only when the words of width are used by the legislature inadvertently. In the present case, as discussed in detail above, it cannot be said by any stretch of reasoning that the parliament had inadvertently used the words "any direction by the political party" in paragraph 2(b). In fact, the provisions of paragraph 2(a) by itself would not have been sufficient to effectively deal with the menace of defection and the provisions of paragraph 2(b), which contain an independent clause, were very essential to achieve the purpose of the Amendment Act. The observations of Bhagwati, J. (as he then was) from the same case, relied upon by Tewatia, J. have to be understood in the context they were made. The question being discussed was the extent of the finality attached to the satisfaction of the president as to the existence of the grave emergency under Article 352(1) and it was ruled that the provisions of clause (5) (a) of Article 352 would not override the power of judicial review of the High Court and the Supreme Court; and if there was an allegation that the exercise of power by the President was colourable inasmuch as either there was no satisfaction recorded or the satisfaction recorded

was absurd or perverse or *mala fide* or based on a wholly extraneous and irrelevant ground, it would be no satisfaction at all and liable to be challenged before a Court. Obviously the principle of reading down, as explained by the majority judgment, was neither invoked nor applied. Instead, what was ruled was that the said provision would not override the power of judicial review of the Courts which is one of the basic features of the Constitution.

31. Consequently, with utmost respect to the views of my learned brother Tewatia, J., I regret my inability to subscribe to the view that the provisions of paragraph 2(b) would be destructive of the democratic set up, the basic feature of our Constitution, unless read down, as suggested. The contentions raised by the learned counsel for the petitioners are accordingly overruled and the constitutional validity of the impugned amendment upheld.

32. Apart from the constitutionality of the Fifty-Second Amendment, the notice (Anneuxre P-6) and the order (Annexure P-8) were sought to be quashed by the learned counsel for the petitioners on the ground that a valid order (Annexure P-3) had already been passed by the Speaker recognising a split in the Shiromani Akali Dal and the petitioners as a separate group representing the faction which had arisen as a result of the said split and the present Speaker had no jurisdiction to review the said order of his predecessor and make a fresh decision. Mr. D. D. Thakur, the learned counsel for respondent No. 6, on the other hand, claimed that the said order (Annexure P3) was without jurisdiction and, as such, being void *ab initio* was rightly held to be not binding on any of the parties by the Speaker. The reasons advanced for this claim were that, no question having arisen whether any member of the House has become subject to disqualification, reference to the Speaker in this regard was pre-mature and incompetent; and that no notice having been issued to the leader of the original political party and the leader of the legislature party, respondent No. 7, the order was passed in violation of the principles of natural justice.

33. Mr. Shanti Bhushan, the learned counsel for the petitioners, refuting the claim of respondent No. 6, argued that whenever, any member of the House makes a claim that he and some other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third members of such legislature party and that the said faction be recognised as his original political party, he has no other remedy except to approach the Speaker to pass a necessary order in this regard and make necessary changes in the registers or the records maintained by him as envisaged by clause (1) (a) of paragraph 8. If this course is not adopted, a queer and paradoxical situation would arise inasmuch as in any session of the legislature thereafter, the splinter group would not know to which political party they belong or whose whip they are to obey. The splinter group, therefore, is not to wait till their claim is challenged by someone and a question would be deemed to have arisen the moment a claim as envisaged by paragraph 3 is made. As regards the making of a reference to the Speaker, he argued that anybody interested in the matter can approach the Speaker and reliance for this contention was placed on a decision of the Supreme Court in Brundaban Nayak's case (supra). As regards the violation of the principles of natural justice, he contended that on the phraseology used in paragraph 3, the Speaker is not competent to make any enquiry or record a reasoned order. The Words used in the said paragraph are "whenever a claim is made", which means that as soon as a claim is made, the Speaker is to accept the same and make necessary changes in the records. The question of issuing a notice to

the leader of the original political party or the legislature party, therefore, would not arise. He, however, does not dispute that the Speaker would be entitled to make a numerical verification of the claim and reject the same if not satisfied in that regard.

34. For taking a decision on the conflicted claims, it is necessary to analyse the true intent and scope of the relevant provisions of the Tenth Schedule. Paragraph 2 provides that subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House if he has voluntarily given up his membership of such political party, or 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. Paragraph 3 provides that where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split and such group consists of not less than one-third of the members of such legislature party, he shall not be disqualified under the above noted provisions of sub-para (1) of paragraph 2. Paragraph sic makes a provision for the decision as to the disqualification on the ground of defection and lays down that if any question arises as to whether a member of a House has become subject to disqualification under the said Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final. The provisions of paragraph 3 are obviously an exception to paragraph 2 and are of the nature of a defence available to a member of the House against his disqualification, who has either voluntarily given up his membership of the political party to which he belongs or has voted or abstained from voting in the House contrary to the direction issued by his political party or by any other person authorised by it. Under paragraph 6, the Speaker would have the jurisdiction in this matter only it any question arises as to whether a member of the House has become subject to disqualification under the said Schedule and the same has been referred to him for decision. The purpose of requirement of a reference obviously is that even when a question as to the disqualification of a member arises, the Speaker is debarred from taking any *suo motu* cognizance and he would be seized of the matter only when the question is referred to him by any interested person. The Speaker has not been clothed with a *suo motu* power for the obvious reason that he is supposed to be a non-party man and has been entrusted with the jurisdiction to act judicially and decide the dispute between the conflicting groups. The other pre-requisite for invoking the jurisdiction of the Speaker under paragraph 6 is the existence of a question of disqualification of the some member. Such a question can arise only in one way, to viz., that any member is alleged to have incurred the disqualification enumerated in paragraph 2(1) and some interested person approaches the Speaker for declaring that the said member is disqualified from being member of the House and the claim is refuted by the member concerned.

35. Now, let us examine the matter other way round as suggested by Mr. Shanti Bhushan. Suppose a split has taken place in the original party giving rise to a separate faction and more than one-third of the members have chosen to form a group representing such a faction; the question arises, is there any cause for them to approach the Speaker under paragraph 6.

The answer obviously would be in the negative. All that they need do would be to approach the Speaker, put up their claim and request him to make necessary corrections in the records. When

such a claim is made, by no stretch of reasoning it can be said that a question has arisen as to whether they have become subject to disqualification under the Tenth Schedule. The Speaker, therefore, would have no jurisdiction to take cognizance of any dispute under paragraph 6 nor to render any decision. Instead, he has to accept the claim as it is. This procedure has to be adopted because the entries in the records maintained under paragraph 8(1) (a) have to be corrected and seats to be allotted to the new group by virtue of the powers conferred on the Speaker under Rule 4 of Chapter II of the Rules of Procedure and Conduct of Business in the Punjab Vidhan Sabha (Punjab Legislative Assembly). When the members claim to have formed a separate group, they would obviously be deemed to have voluntarily given up the membership of their political party within the meaning of clause (a) of paragraph 2(1). If some interested party feels that thereby they have incurred the disqualification, it is he who has to approach the Speaker under paragraph 6 and it would be then that a question can be said to have arisen as to whether a member of a House has become subject to disqualification and the Speaker would be seized of the matter. If no one challenges the claim of the members who have formed a new group, the provisions of paragraph 6 would not come into operation nor the Speaker would be seized of any question relating to the disqualification of any member of the House. The action of the Speaker which he is required to take when a claim is made under paragraph 3 would not, therefore, be an order under paragraph 6 and would be only an executive action on his part in exercise of his powers under Rules 4 and 113 of the said Rules. Moreover, as already stated above, the provisions of paragraph 3 are an exception to paragraph 2 and provide a defence to a member who is alleged to have incurred a disqualification. It is a thing of common knowledge that no one can approach a judicial or quasi-judicial authority for adjudication upon his defence because unless someone alleges that he has committed the wrong, no cause of action would arise for pleading the defence or seeking an adjudication thereon.

36. The argument of Mr. Shanti Bhushan that if the splinter group had no right to approach the Speaker under paragraph 6 and has to wait till some interested party makes a reference to the Speaker, it would lead to a paradoxical situation as in that case the splinter group would not know to which political party they belong or whose whip they are to obey, becomes untenable in view of the analysis of the relevant provisions made above. The moment such a claim is made, the splinter group would be deemed to have given up voluntarily the membership of their political party and the new faction which has come into being would be deemed to be their political party for the purposes of paragraph 2(1). If their claim is not disputed by any interested person or by their original political party, no trouble would arise; but if somebody disputes their claim, be has to approach the Speaker under paragraph 6, who would then be seized of the matter and pass a proper order because no other authority in case of dispute has the jurisdiction to declare that the splinter group has incurred the disqualification or not.

37. The reliance on the decision of the Supreme Court in Brundaban Nayak's case (supra) for the proposition that the question would be deemed to have been referred to the Speaker on the filing of the application by the petitioners was also wholly misplaced. What happened in that case was that one P. Biswal made an application to the Governor of Orissa that Brundaban Nayak, subsequent to his election had incurred a disqualification under Article 191 (1) (a) of the Constitution, which was forwarded to the Election Commission for its opinion. On a notice having been issued by the Election Commission, Brundaban Nayak challenged its competency to enquire into the matter and, his counsel, without submitting to its jurisdiction, prayed for an adjournment. The request having been declined, he filed the petition under Article 226 of the

Constitution for quashing the enquiry pending before the Election Commission, which was dismissed *in limine.* He went to the Supreme Court against the order of the High Court. One of the contentions raised before the Supreme Court by Mr. Setalvad, his learned counsel, was, that no question could be said to have arisen as to whether the appellant Brunaban Nayak had become subject to any of the disqualifications because such a question could be raised only on the floor of the Legislative Assembly and that too by a member of the Assembly and not any ordinary citizen in the form of a complaint to the Governor. It was further argued that the expression that if any question arises it shall be referred for the decision of the Governor suggests that there was some referring authority which was to make a reference to the Governor for his decision. The contentions were repelled with the following observations :

Para 12 :

> "We are not impressed by these arguments. It is significant that the first clause of Article 192(1) does not permit of any limitations such as Mr. Setalvad suggests. What the said clause requires is that a question should arise; how it arises, by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise; and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of Article 192(1) is plainly inconsistent with the words used in the said clause.

Para 13 :

> "Then as to the argument based on the words the question shall be referred for the decision of the Governor" these words do not import the assumption that any other authority has to receive the complaint and after a *prima facie* and initial investigation about the complaint, send it on or refer it to the Governor for his decision.
>
> *** *** *** ***
>
> *** *** *** ***
>
> If the intention was that the question must be raised first in the Legislative Assembly and after a *prima facie* examination by the Speaker it should be referred by him to the Governor, Article 192(1) would have been worded in an entirely different manner. We do not think there is any justification for reading such serious limitations in Article 192(1) merely by implication. *** *** *** *** *** *** *** ***
>
> ***The object of Article 192 is plain. No person who has incurred any of the disqualifications specified by Article 191(1), is entitled to continue to be a member of the Legislative Assembly of a State, and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Article 190(3)(a), there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat. The whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member

> forfeits that status by reason of a subsequent disqualification, it is in the interests of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192(2). Therefore, we must reject Mr. Setalvad's argument that a question has not arisen in the present proceedings as required by Article 192(1)."

38. It passes my comprehension as to how the above-said observations support the contention of the learned counsel that a question would be deemed to have arisen within the meaning of paragraph 6 on the making of the application by the petitioners to the Speaker. On the other hand, it can be reasonably implied from the said observations that the question arises only when an interested party makes a petition to the Speaker alleging that some member of the House has incurred a disqualification. Further, it becomes clear that not only the political party, its leader or a member of the Legislature, but any citizen can make an application to the Speaker raising a question under paragraph 6, which is a complete answer also to the other argument raised by Mr. Shanti Bhushan that in the matter of disqualification, nobody except the member concerned would be the interested party.

39. I am, therefore, of the considered view that neither any question as envisaged by paragraph 6 had arisen on the filing of the Annexure P-1 before the Speaker nor the order, Annexure P-3, can be said to be, an order passed under paragraph 6. The natural corollary to this conclusion would be that a question as to the disqualification of the petitioners had arisen and the Speaker was seized of the matter only when an application in that regard was made to him by respondent No. 7.

40. Even if it may be accepted for the sake of argument that the filing of the application, Annexure P-1, before the Speaker gave rise to a question as to the disqualification of the petitioners and the Speaker was seized of the matter, the order, Annexure P-3, passed by him would be *non est* and ineffective so for as respondent No. 7 is concerned. The principle of law is well established that an order passed in a given proceedings would not bind any person affected thereby who was neither party to those proceeidngs nor given an opportunity of being heard before passing the same. It was on the same principle that a Five Judges Bench of this Court in *State of Haryana and others v. Vinod Kumar and others*[11] , held an order of the Collector Agrarian to be ineffective and *non est* against the persons who were affected thereby but were neither party to the proceedings nor afforded any opportunity of being heard. The Fifty-Second Amendment has been enacted to prevent defections which necessarily means that it has been enacted primarily for the benefit of the political parties whose members constitute the house, though broadly speaking any citizen can invoke its provisions. The voluntary giving up of the membership of any political party would affect such a party and so would any order passed under paragraph 6. Consequently an order passed under paragraph 6 affecting adversely any political party would be ineffective and *non est* against it if no notice is issued to it nor opportunity of being heard afforded. By making a claim under paragraph 3, the petitioners are deemed to have voluntarily given up the membership of the Shiromani Akali Dal on whose tickets they were elected. So, they were liable to be declared as disqualified from being members of the House. If their defence was to be accepted under paragraph 3 and a decision, as envisaged under paragraph 6, to be made, the principles of natural justice would require a notice to be served on the President of the political party concerned. It has already been discussed above in detail that the

Speaker would be a Tribunal while acting under paragraph 6 and the proceedings before him of quasi-judicial nature. Any order passed by him under that paragraph without issuing notice or affording any opportunity of hearing to the interested party, therefore, would be *non est* and ineffective against such a party. As before passing the order, Annexure P-3, neither the political party nor any other person interested in the matter was heard, it would bind none and in that sense it can be said to be an order void *ab initio*..... On both the grounds, therefore, the Speaker was justified in ignoring the order, Annexure P-3. However, the order, dated July 4, 1986, Annexure P-8, has to be quashed because the claim of Shri Amrinder Singh that he has been elected leader of the splinter group could be disposed of only after the question of disqualification of the members of that group has been settled and their defence under paragraph 3 upheld.

41. In view of my findings recorded above, it is not necessary at this stage to determine the exact import of the words "split in his original political party" used in paragraph 3 and the matter is left open for decision by the Speaker after taking into consideration all the relevant facts and circumstances. However, as brother Tewatia, J., has expressed his view in this regard, I must record my disagreement therewith in so far as it has been stated that the magnitude of the split was not of any consequence.

42. In the result, these petitions are allowed to the extent that the order, Annexure P-8, is quashed and the other prayers declined. In the circumstances of the case, the parties are left to bear their own costs.

D.S. Tewatia, J. :-

43. The petitioners, who are Members of the Punjab Legislative Assembly, have in these writ petitions, impugned the notice dated 13th June, 1986 issued to them individually (a sample copy of which is Annexure P-6, attached to the petition), by the Speaker of the Assembly - respondent No. 6 Shri Surjit Singh Minhas requiring them to show cause as to why they be not disqualfied from the membership of the Punjab Legislative Assembly in terms of Article 191(2), read with paragraph 2 and 6 of Tenth Schedule of the Constitution of India. They have also impugned the order of the Speaker, respondent No. 6, dated 4th July, 1986 (Annexure P-8), whereby he rejected the application, dated 2nd June, 1986 (Annexure P-7), of Capt. Amarinder Singh, M.L.A., in which he had claimed to be recognised as the Leader in the Legislative Assembly of 27-M.L.As. belonging to the Shiromani Akali Dal (hereinafter referred to as the breakaway Akali Dal Legislative Party).

44. Before adverting to the grounds of challenge to Annexures P-6 and P-8 and the rival contentions in this regard addressed at the Bar, the relevant facts having a bearing on the questions posed for consideration before this Bench deserves recapitulating at the very out set.

45. Shiromani Akali Dal Legislative Party comprised of 73 M.L.As. The breakaway Akali Dal Legislative Party, on 7th May, 1986, submitted a memorandum (Annexure P-1) to the then Speaker Shri Ravi Inder Singh, respondent No. 4, in which after recalling the fact that they were elected on the Shiromani Akali Dal (Longowal) ticket to the Punjab Vidhan Sabha and that on account of fundamental differences with S. Surjit Singh Barnala, Chief Minister, Punjab, respondent No. 7, the present leader of the Legislature Party, on the issue of police entry into the holy precincts of Sri Harmandir Sahib, they had decided to form a separate Legislative group of

the Shiromani Akali Dal as a consequence of a split in the political party and would be grateful if he (the Speaker) would recognize them and allocate them separate seats in the Punjab Vidhan Sabha.

46. Each Member, who had signed Memorandum (Annexure P-1), submitted a declaration to the Speaker on 8th May, 1986 (a sample copy of which is Annexure P-2, appended to the position). In this declaration, each Member had acknowledged the fact that he had signed along with others, the application jointly submitted to him voluntarily, of his free will and without any duress from any person or political party.

47. On 8th May, 1986, the then Speaker passed an order (Annexure P-3), whereby he recognised the new group of the breakaway Akali Dal Legislature Party, as a separate political party and ordered that they be given separate seats in the Assembly. In that order, he also declared that the Members of new group of breakaway Akali Dal Legislature Party did not incur any disqualification in view of the provisions contained in paragraph 3 of the Tenth Schedule of the Constitution of India as the group represented a faction that had emerged as a result of the split in the original party and the membership of the new group comprised of more than 1/3rd of the original Shiromani Akali Dal, Legislature Party, whose effective strength (excluding the Speaker, who is neutral) was then '72'.

48. On the same date, the Punjab Vidhan Sabha Secretary issued a Press-note (Annexure P-4) in substance to same effect as was the order of the then Speaker (Annexure P-3).

49. On 27th May, 1986, the then Speaker, Shri Ravi Inder Singh, tendered his resignation. The Deputy Speaker of the Punjab Vidhan Sabha, Shri Nirmal Singh Kahlon had become Minister on 6th May, 1986. Thus, both the offices of the Speaker and the Deputy Speaker became vacant. Therefore, the Governor of Punjab summoned the House to meet on 2nd June, 1986, on which date the House was to elect a Speaker and a Deputy Speaker, besides transacting other business. The Members of the breakaway Akali Dal Legislature Party were allotted separate seats in the Legislative Assembly, which was presided over by *pro tem* Speaker Pt. Mohan Lal, respondent No. 5; that this group set up S. Arjan Singh Litt to context for the office of the Speaker and Dr. S. S. Mohi for the office of the Deputy Speaker and a whip to vote for them was issued to the Members of this group by Shri Amarinder Singh, Leader of the said group. The original Shiromani Akali Dal Legislature Party headed by Shri Surjit Singh Barnala, Chief Minister, Punjab, set up Shri Surjit Singh Minhas respondent No. 6 for the office of the Speaker and Shri Jaswant Singh for the office of the Deputy Speaker. The candidates set up by Shri Surjit Singh Barnala were elected Speaker and the Deputy Speaker securing 46 votes each, whereas the candidates put up by the breakaway Akali Dal Legislature Party secured 26 votes each.

50. On 11th June, 1986, Shri Surjit Singh Barnala, respondent No. 7, submitted a petition (Annexure P-5) to the Speaker, respondent No. 6, under Article 191, clause (2), read with paragraph 2 and 6 of Tenth Schedule. Vide this petition, Shri Surjit Singh Barnala, respondent No. 7 sought the Speaker to declare the Members mentioned in that petition disqualified from being Members of the House (Punjab Vidhan Sabha) as they had voted against the two candidates set up by the Shiromani Akali Dal for the office of Speaker and the Deputy Speaker contrary to the directions issued by Shri Surjit Singh Barnala, who was Leader of the Shiromani Akali Dal Legislature Party, without obtaining the prior permission of the party or any other

person or authority, competent to grant such permission and thus incurred disqualification in terms of clause (2) of Article 191 of the Constituion of India.

51. In the wake of this petition, the Speaker, respondent No. 6 Shri Surjit Singh Minhas issued a show cause notice (Annexure P-6), to each such Member, already referred to above. The Speaker also rejected the application, dated 2nd June, 1986 (Annexure P7) of Capt. Amarinder Singh, - vide the order, dated 4th July, 1986 (Annexure P-8), already referred to above, which fact led to the filing of the abovementioned writ petitions in this Court, *inter alia* alleging that the petitioners had successfully con tested the Legislative Assembly Elections, held in September, 1985, on Shiromani Akali Dal ticket and were still Members of the Punjab Legislative Assembly; that the Commando attack ordered by the State of Punjab, respondent No. 2, at the instance of Shri Surjit Singh Barnala, Chief Minister of Punjab, respondent No. 7, on Sri Harmandir Sahib (Golden Temple), at Amritsar, on 30th April, 1986, hurt the religious feelings of the people in general and the Sikhs in particular; that the ordering of the Commando attack ran counter to the stated political philosophy of Shiromani Akali Dal as is evident from its manifesto issued at the time of 1985 - Elections in which it had strongly criticised the attack on the Golden Temple in June, 1984, under the orders of the Union of India.

52. That the petitioners along with a number of other partymen expressed disapproval of the said Commando attack of April 1986. A majority of the functionaries of the Shiromani Akali Dal, including its office-bearers and District Jathedrs disapproved this action and resigned from their posts in protest. S. Parkash Singh Badal, petitioner No. 1 and S. Gurcharan Singh Tohra, resigned from the membership of the working committee of the Shiromani Akali Dal on 1st May, 1986. Two of the Cabinet Ministers, i.e., petitioners Nos. 2 and 23, who were Members of the Ministry, headed by respondent No. 7, resigned from their posts and also repudiated the leadership of respondent No. 7 in the party on 2nd May, 1986. The third Minister (petitioner No. 19) resigned from his Post and repudiated the leadership of respondent No. 7, as the President of the party, on 3rd May, 1986. Shri Surjan Singh Thekedar and Shri Majit Singh, the Vice-President and the General Secretary of the Shiromani Akali Dal undivided party respectively also rebelled against the leadership of respondent No. 7. The petitioner Nos. 19 and 20 relinquished the posts of the District Presidents of Gurdaspur and Ludhiana units of the Shiromani Akali Dal, led by respondent No. 7. A call was given to all concerned of the Shiromani Akali Dal and the Akali Legislature Party to come and join the protest and repudiate the leadership of S. Surjit Singh Barnala, respondent No. 7, that the aforesaid leaders along with District Jathedars and other leaders of the party formed a separate party, namely the Shiromani Akali Dal with its acting President Shri Surjan Singh Thekedar and Shri Manjit Singh as its General Secretary. Consequently, the persons, whose views were akin to the views of the petitioners and their other colleagues were nominated as District Jathedars of the new party. In this manner a complete and formal vertical split all along the line right up to the rank and file of the party in the Shiromani Akali Dal party, led by S. Surjit Singh Barnala, respondent No. 7, came about in the wake of ill-designed Commando attack on the Golden Temple on 30th April, 1986, ordered by Shri Surjit Singh Barnala; that in order to maintain the tradition of principled politics of the Shiromani Akali Dal and to ensure consistency in respect of fundamental political and religious issue directly affecting the party, the petitioners submitted a memorandum to the Speaker of the Punjab Vidhan Sabha (Annexure P-1) on 7th May, 1986; that more Akali Legislatures would have joined the breakway Akali Dal Legislature party if respondent No. 7 had not offered the remaining Members lucrative offices. S. Surjit Singh Barnala had got appointed 25 of them as Ministers on

5th May, 1986, and six others were got appointed as Chairman of various Corporations. Thus, out of 46 Members of the Akali Dal Legislature Party, who now owe allegiance to respondent No. 7, barring six M.L.As., all happened to be holding one or the other lucrative office.

53. Since all the petitions (Civil Writ Petitions Nos. 3065, 3268 and 3435 of 1986, involve common questions of law and facts, therefore, these are proposed to be decided by a common judgment. Any reference to facts in this judgment would be from Civil Writ Petition No. 3435 of 1986.

Two separate written statements have been filed on behalf of the Speaker, Shri Surjit Singh Minhas, respondent No. 6 and the Chief Minister, Punjab, Shri Surjit Singh Barnala, respondent No. 7.

54. The relevant assertions made in the two written statements shall be taken notice of in detail, if deemed necessary while dealing with the relevant contentions connected therewith. At this stage, it would suffice to mention that respondent No. 7 in his written statement has asserted that the police entry in the premises of the Golden Temple Complex was purely for administrative reasons; that there was no significant public reaction against that action; that the petitioners and the other Members of the socalled splinter group had sought to give a twist to the facts for achieving their political ends; that the formation of the so-called splinter group was not on account of police action in the premises of the Golden Temple Complex, but was the result of the political frustration; that it was incorrect to say that Shiromani Akali Dal, separate party, has been formed as a result of the split of the original party; that there was no split in the Shiromani Akali Dal till 30th June, 1986, when for the first time a news item appeared in the Tribune indicating that the splinter group contemplated calling a delegates-session to elect a new President in place of respondent No. 7; that it was wrong to allege that the Ministry had been expanded to win favour of the Legislators and to avoid defection by such M.L.As., that in fact an expansion of the Ministry was over due and the expansion was carried out in the best interest of State Administrations that the vancancies of Chairman of Corporations were lying vacant and had to be filled up in best public interest; that in the petition, the petitioners had not averred that any new political party had been formed or that the petitioners had quit the Shiromani Akali Dal and that they had become Members of any new political party, nor there is any reference in Annexure P-1 to the formation of any new political party outside the Vidhan Sabha; that it had not been mentioned in the petition as to when delegate-session of the main political party was called and when a decision for the formation of a separate political party was taken; nor the name of that separate political party had been given; that differences of opinion in the Legislature party on issues with the Leaders of the party do not constitute the formation of a political party; that until a new political party was constituted outside the Legislature, the legislators could not defect from the main political party on the Pretext that they themselves had constituted a group in defiance, of the Leader of the political party in the Legislature.

55. Mr. Shanti Bhushan, Senior Advocate of the Supreme Court of India, has addressed the Court on behalf of the petitioners; on behalf of the Union of India Mr. G. Ramaswamy, Additional Solicitor-General of India, and on behalf of the Speaker and other respondents Mr. D. D. Thakur, Senior Advocate of the Supreme Court of India, have argued the case.

56. The submissions made by Shri Shanti Bhushan fall under two broad heads :-

(i) Constitutionality of The Constitution (Fifty-Second Amendment) Act; 1985;

and

(ii) Merits of the action of respondent No. 6 in passing the order (Annexure P-8) and issuing the impugned show cause notice (Annexure P-6).

57. The Parliament in exercise of its constitution power under Article 368 of the Constitution of India enacted the Constitution (Fifty-Second Amendment) Act, 1985 (hereinafter referred to as 'the Act').

58. Sub-section (b) of Section 3 of the Act added the following clause (2) to Article 102 :

"(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule."

Sub-section (a) of Section 3 and Section 2 of the Act made consequential changes in Article 102 and Article 101 of the Constitution of India, respectively.

Sub-section (b) of Section 5 of the Act too added a clause, identical to the one reproduced above, as clause (2) to Article 191 of the Constitution.

Sub-section (a) of Section 5 and Section 4 of the Act made consequential changes in Article 191 and Article 190 of the Constitution. Section 6 of the Act provided for adding of Tenth Schedule.

59. Paragraph 1 of Tenth Schedule defines some of the expressions, namely - "House", "Legislature Party", "original political party" and paragraph occurring in the Tenth Schedule. Paragraph 2 provides for disqualification on account of defection. Paragraph 3, 4 and 5 prescribe conditions, in which the disqualifying provisions of paragraph 2 would not be attracted. Paragraph 6 designates "Chairman or, as the case may be the Speaker of the House" to be the authority to decide the question as to whether a Member of the House had become subject to disqualification in terms of paragraph 2 or not and also terms his decision to be "final". Sub-paragraph (2) of paragraph 6 brings the proceedings of sub-paragraph (1) of this paragraph within the meaning of Article 122 or as the case may be within the meaning of Article 212 of the Constitution of India.

60. Paragraph 7 provides for the ousting of the jurisdiction of the courts in respect of any matter connected with the disqualification of a Member of a House under the Tenth Schedule. Paragraph 8 authorizes the Chairman as the Speaker of a House to make rules for giving effect to the provisions of Tenth Schedule and also particularizes some of the topics without prejudice to the generality of the enabling power to make rules.

61. Mr. Shanti Bhushan has canvassed that the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru and others v. State of Kerala and another*[11] , has ruled that the Parliament in exercise of constituent power in terms of Article 368 of the Constitution cannot erode or destroy the basic structure or the framework of the Constitution. The seven-Judges, who constituted the majority of the thirteen Judges' Bench, who decided Kesavananda Bharati's case (supra), without being exhaustive identified some of the basic features of the Constitution, as

forming part of the basic structure or frame-work of the Constitution. Out of them he listed :

(i) Parliamentary Democracy;

(ii) Separation of powers between the Legislature, Executive and the Judiciary;

(iii) The Federal structure; and the

(iv) Judicial review by the courts, - as being relevant to the present case.

62. According to Mr. Shanti Bhushan, the Parliament exceeded its constituent power by enacting paragraph 2, clause (b) and paragraphs 6 and 7 of Tenth Schedule, added to the Constitution by Section 6 of the Act (hereinafter referred to as the paragraphs). He maintains that whereas paragraph 2 is destructive of three basic features of the Constitution, namely - (1) Parliamentary democracy, (2) separation of powers between three wings of the State, namely - Executive, Legislature and Judiciary, and (3) the Federal character of the Constitution, Paragraphs 6 and 7 eroded the power of judicial review, exercised by the High Court and the Supreme Court of India.

63. Mr. Shanti Bhushan also contended that since paragraphs 6 and 7 affected the jurisdiction of the High Court under Article 226 and of the Supreme Court under Article 136 of the Constitution of India, the Bill containing paragraphs 6 and 7 had to be ratified in terms of proviso to sub-clause (2) of Article 368 of the Constitution before it could have been presented to the President for his assent and since admittedly the Bill had not been ratified in terms of the said proviso, the entire Act is constitutionally invalid.

64. The contention pertaining to the ratification of the Constitution (Fifty-Second Amendment) Bill, 1985 (hereinafter referred to as 'the Bill') in terms of the proviso, aforementioned, deserves examination at the very outset, because if this contention prevails, then the Act may have to be declared constitutionally invalid on this score alone and consequently, it may not be necessary to examine the other provisions of the Act, in the light of the contention raised by Mr. Shanti Bhushan in regard to them already taken notice of above.

65. As to whether the Bill was required to be ratified in temrs of proviso, in question, it would first have to be seen as to whether paragraphs 6 and 7 affected any change in Article 226 and Article 136 of the Constitution of India, as these Articles form part of the group of provisions, which are enumerated by the proviso, in question, which provision for convenience sake can be called "the entrenched provision". Before proceeding with the rival submissions addressed at the Bar in regard to the requirement of ratification of the Bill, it would be conducive to the appreciation of the same if the relevant provision of Article 368 of the Constitution is reproduced for ready reference. The relevant portion of Article 368 of the Constitution is in the following terms :-

> "368. *Power of Parliament to amend the Constitution and procedure therefor.* - (1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this constitution in accordance with the procedure laid down in this article.

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

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

(a) Article 54, Article 55, Article 73, Article 162 or Article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in parliament, or

(e) the provisions of this article, the amendment shall also require to be ratified by the Legislature of not less then one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President for assent.

(3) ... ...

(4) ... ...

(5) ... ..."

66. Let us now take up paragraphs 6 and 7 of the Tenth Schedule for a separate scrutiny :

Paragraph 6 in the following terms :-

"6. *Decision on quetions as to dis-qualfication* on ground of defection :-

(1) If any question arises as to whether a member of a House has become subject to disqualification under this Schedule the question shall be referred for the decision of the Chairman, or, as the case may be, the Speaker of such House and his decision shall be final :

Provided that where the question which has arisen is as to whether the Chairman or the Speaker of a House has become subject, to such disqualification, the question shall be referred for the decision of such member of the House as the House may elect in this behalf and his decision shall be final.

(2) All proceeidngs under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Schedule shall be deemed to be proceedings in parliament within the meaning of article 122 or, as the case may be,

proceedings in the Legislature of a State within the meaning of Article 212."

67. Perusal of paragraph 6 would reveal that clause (1) thereof makes the decision of the adjudicating authority, 'final'. Sub-clause (2) thereof makes the proceedings envisaged by sub-paragraph (1) of paragraph 6 and the adjudicating authority immune from the jurisdiction of any court in terms of Article 122 and Article 212 of the Constitution of India.

Article 122 of the Constitution provides that courts are not to interfere into the proceedings of parliament on the ground of any alleged irregualrity of 'procedure'. Clause (1) and clause (2) thereof provide that no Officer or Member of Parliament, who is vested by or under the Constitution with the powers for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of these powers.

Article 212 of the Constitution similarly provides in regard to the proceedings of the Legislature of the State.

68. Mr. Shanti Bhushan confined his challenge in the context of requirement of ratification to sub-paragraph (1) of paragraph 6 only and, therefore, it has to be seen as to whether sub-paragraph (1) of paragraph 6, in any manner sought to effect any change in the entrenched provision of Article 226 and Article 136 of the Constitution of India ?

69. Mr. G. Ramaswamy has argued that 52nd Amendment was not intended to effect any change in Article 226 and Article 136 of the Constitution of India, - its main purpose being to amend Article 102 and Article 191 and add a new Schedule to the Constitution to give effect to those amendments and added that even in the event of it being held that paragraphs 6 and 7 in some manner effected the ambit of Article 226 and Article 136 of the Constitution of India, the Bill in question, would not require to be ratified by the State Legislatures in terms of proviso to clause (2) of Article 368 of the Constitution of India in view of the application of the doctrine of pith and substance - the encroachment upon the jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution of India, respectively, being incidental and unavoidable and the purpose underlying the enactment of the Bill had to be achieved. Mr. Ramaswamy further argued that the procedure of ratification envisaged by proviso to clause (2) of Article 368 of the Constitution was directory and not mandatory in character and, therefore, the Act cannot be held to be still-born enactment on that score.

70. Mr. D.D. Thakur, the learned counsel for respondent No. 6, adopted a somewhat different approach in regard to the scope and ambit of paragraphs 6 and 7 and urged that neither paragraph 6 nor paragraph 7 in any manner affected the application of Article 226 and Article 136 of the Constitution of India. Mr. D.D. Thakur argued that power of judicial review envisaged by Article 226 and Article 136 of the Constitution remains uneffected by paragraphs 6 and 7, in that the decision of the Speaker remained subject to the writ jurisdiction of the High Court and the Special Leave jurisdiction of the Supreme Court.

71. Let us first decide as to whether paragraph 6 in any manner affected the jurisdiction of the High Court under Article 226 and of the Supreme Court under Article 136 of the Constitution of India.

Mr. G. Ramaswamy referred us to a Supreme Court decision in *Brundaban Nayak v. Election Commission of India and another*[14], and drew our pointed attention to paragraphs 13 and 14 thereof in support of his submission in relation to paragraph 6 of Tenth Schedule that the jurisdiction of courts, including the High Court and the Supreme Court stood ousted, and that the order of the Speaker rendered in terms of paragraph 6 of Tenth Schedule could not be called in question in any manner either in the High Court or in the Supreme Court :

Para 13 :

> "Then as to the argument based on word "the question shall be referred for the decision of the Governor", these words do not import the assumption that any other authority has to receive the complaint and after a *prima facie* and initial investigation about the complaint, send it on or refer it to the Governor for his decision. *These words merely empahsise that any question of the type contemplated by clause (I) of Article 192 shall be decided by the Governor and Governor alone; no other authority can decide it, nor can the decision of the said question as such fall within the jurisdiction of the Courts, That is the significance of the words "shall be referred for the decision of the Governor"* If the intention was that the question must be raised first in the Legislative Assembly and after a *prima facie* examination by the Speaker it should be referred by him to the Governor, Article 192(1) would have been worded in an entirely different manner. We do not think there is any jurisdiction for reading such serious limitations in Article 192 (I) merely by implication."

para 14 :

> "The object of Article 192 is plain. No person who has incurred any of the disqualifications specified by Article 191(I), is, entitled to continue to be a member of the Legislative Assembly of a State, and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Article 190(3)(a), there should be no difficulty in holding that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191(1) and should, therefore, vacate his seat. The whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member forfeits status by reason of a subsequent disqualification, it is in the interest of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192(2). Therefore, we must reject Mr. Satalvad's argument that a question has not arisen in the present proceedings as required by Article 193(1)."

72. He also argued that in its substantive import paragraph 6 is almost in *pari materia* with Article 192 of the Constitution. He laid stress on the fact that if the framers of the original Constitution thought it fit to make the decisions of the Governor immune from the judicial review by the High Court and the Supreme Court, then the Parliament by enacting paragraph 6, a parallel provision and therein substituting the expression 'Governor' for the word 'Speaker' or the

'Chairman' must have intended the same result.

73. I find no merit in the contention advanced on behalf of the Additional Solicitor-General of India, Mr. G. Ramaswamy. In my view, the authority relied upon by Mr. Ramaswamy is of no avail. In my opinion, despite the use of the word 'final' in sub-paragraph (1) of paragraph 6, the decision of the Speaker, or as the case may be, of the Chairman of the House remains subject to the writ jurisdiction of the High Court under Article 226 and *inter alia* the special Leave jurisdiction of the Supreme Court of India.

74. Their Lordships in Brundaban Nayak's case (supra) did not lay down the proposition that the order of the Governor passed in terms of Article 192 of the Constitution would be immune from review by the High Court and the Supreme Court as would be presently shown.

75. In Brundaban's case (supra), the Supreme Court was called upon to resolve the controversy as to 'whether it was the Speaker of the House, who in the first instance, was to receive the complaint and examine the question of disqualification of a Member of that House and on being satisfied that the Member had incurred the disqualification mentioned in the complaint, he was to make a reference to the Governor in terms of Article 192 of the Constitution ? The contention raised before the Supreme Court was that since that had not been done the order of the Governor disqualifying the given Member was illegal. Their Lordships held that under Article 192 of the Constitution, the Speaker of the House had no jurisdiction in the matter whatsoever. Their Lordships also ruled that the Chief Commissioner alone had the jurisdiction to investigate thhe matter and make a recommendation to the Governor, who in turn was bound to pass an order in accordance with the said recommendation. The underlined observation in paragraph 13, which Mr. G. Ramaswamy is holding out to show that the Supreme Court has ruled that Article 192 of the Constitution ousted the jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution, respectively, do not support his contention. What their Lordships meant to exclude was the judicial determination of the question by the Courts and not the judicial review by the High Court and the Supreme Court of the decision of the Governor. In that case their Lordships were not called upon to decide as to whether the Governor's order passed in terms of Article 192 of the Consitution was or was not immune from judicial review by the High Court and the Supreme Court under Article 226 and Article 136, respectively of the Constitution. The import of the expression "final" used in Article 192 of the Constitution did not even come up for consideration at all. So much so their Lordships have not mentioned even once, the word "final".

76. Their Lordships did not rule that the order of the Governor was immune from the power of the judicial review of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution of India.

77. The very expression "final" also occurs in Article 217(3) of the Constitution in regard to the order of the President of India. This provision is in the following terms :-

> "217(3) *Appointment and conditions of the office* of a Judge of a High Court - (1) ... ...
>
> (2) ... ...
>
> (3) If any question arises as to age of a Judge of a High Court, the question shall be

decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final."

78. Their Lordships had an occasion to consider the ambit of the power of the President and the nature of the order passed by him in exercise of the power under Article 217(3) in *Union of India v. Jyoti Parkash*[14], Their Lordships held that the High Court could examine the validity of the order passed by the President in certain respects. In this regard the following observations of their Lordships in para 31, at page 1106 deserve to be noticed :-

> "... ... The President acting under Articles 217(3) performs a judicial function of grave importance under the scheme of our Constitution. He cannot act on the advice of his Ministers. Notwithstanding the declared finality of the order of the President the Court has jurisdiction in appropriate case to set aside the order, if it appears that it was passed on collateral considerations or the rules of natural justice were not observed, or that the President's judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But this Court will not sit in appeal over the judgment of the President nor will the Courts determine the weight which should be attached to the evidence. Appreciation of evidence is entirely left to the President and it is not for the Courts to hold that on the evidence placed before the President on which the conclusion is founded, if they were called upon to decide the case they would have reached some other conclusion."

79. The Constitutional Bench of 5 Judges in *Durga Shankar Mehta v. Raghuraj Singh and others*[15] , had an occasion to consider the ambit of Section 105 of the Representation of the People Act, 1951, in the context of their jurisdiction under Article 136 of the Constitution. On the strength of the provision of Section 105, *ibid,* which would be presently noted, a contention was advanced before their Lordships that the order of the Election Tribunal is not subject to review by the Supreme Court under Article 136 of the Constitution of India and the said argument was further sought to be underpinned by a reference to the provisions of Article 329, Clause (b) Article 329(b) provided that no election shall be called in question except by an Election Petition presented in accordance with the provisions of this part. Section 105 of the Representation of the People Act provided that every order of the Tribunal made under this Act shall be final and conclusive.

80. Their Lordships repelled the contention with the follwing observations made in paragraph 4 and held that the powers of the Supreme Court to interfere by way of Special Leave could always be exercised :-

... ...

... ...The jurisdiction with which the Election Tribunal is endowed is undoubtedly a special jurisdiction; but once it is held that it is a judicial Tribunal empowered and obliged to deal judicially with disputes arising out of or in connection with election, the overriding power of this court to grant special leave, in proper cases, would certainly be attracted and this power cannot

be excluded by any parliamentary legislation.

The *'non-obstante'* clause with which Article 329 of the Constitution begins and upon which the respondent's counsel lays so much stress debars us, as it debars any other court in the land, to entertain a suit or a proceeding calling in question any election to the parliament or the State Legislature. It is the Election Tribunal alone that can decide such disputes, and the proceeding has to be initiated by an election petition and in such manner as may be provided by a statute. But once that Tribunal has made any determination or adjudication on the matter, the powers of this court to interfere by way of special leave can always be exercised."

... ...

... ...The only courts or tribunals, which are expressly exempted from the purview of Article 136, are those which are established by or under any law relating to the Armed Forces as laid down in clause (2) of the Article". "...The powers given by Article 136 of the Constitution however are in the nature of special or residuary powers which are exercisable outside the purview of ordinary law, in cases where the needs of justice demand interference by the Supreme Court of the land. The Article itself is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing appeals, by, granting of special leave, against any kind of judgment or order made by a court or tribunal in any cause or matter and the powers could be exercised in spite of the specific provisions for appeal contained in the Constitution or other laws. The Constitution for the best of reasons did not choose to fetter or circumscribe the powers exercisable under this Article in any way.

Section 105 of the Representation of the people Act certainly gives finality to the decision of the Election Tribunal so far as that Act is concerned and does not provide for any further appeal but that cannot in any way cut down or affect the overriding powers which this court can exercise in the matter of granting special leave under Article 136 of the Constitution."

81. The latest judgment by the Constitutional Bench in *(S.P. Sampath Kumar v. Union of India and others)*[16] *,* should in any case be taken to have settled finally the controversy as to the scope of Judicial review power of the High Court and the Supreme Court. Their Lordships have held that the order of a Tribunal is always subject to the power of Judicial review of the High Court and the Supreme Court unless the Tribunal in question is a complete substitute of the High Court in the particular sphere as was the position of Tribunal created in pursuance of the provision of Article 323-A of the Constitution. In this regard the following observation of Bhagwati, C.J. are instructive :-

> "It is now well-settled as a result of the decision of this Court in Minerva Mills Ltd. & others v. Union of India and Ors. that Judicial review is a basic and essential feature of the Constitution and no law passed by Parliament in exercise of its constituent power can abrogate it or take it away."

* * * * * *

> "*** It is also a basic Principle of the Rule of law which permeates every provision of the Constitution and which forms its very core and essence that the exercise of power by the

executive or any other authority must not only be conditioned by the Constitution but also be in accordance with law and it is the judiciary which has to ensure that the law is observed and there is compliance with the requirements of law on the part of the executive and other authorities. This function is discharged by the judiciary by exercise of the power of judicial review which is a most potent weapon in the hands of the judiciary for maintenance of the Rule of law. The power of judicial review is an integral part of our constitutional system and without it, there will be no Government of Laws and the Rule of Law would become a teasing illusion and a promise of unreality. * * *"

* * * * * *

"It is undoubtedly true that my judgement in Minerva Mills Ltd. case (supra) was a minority judgment but so far as this aspect is concerned, the majority Judges also took the same view and held that judicial review is a basic and essential feature of the Constitution and it cannot be abrogated without affecting the basic structure of the Constitution. * * * * * *

* * * * *

* * * * * * *

82. The Court of Appeal, speaking through Lord Justice Denning *Re; Gilmore's Application*[17], while examining the effect of Section 36(3) of the National Insurance (Industrial Injuries) Act, 1946. "that any decision of a claim or question shall be final" posted the question : "Do these words preclude the Court of Queen's Bench from issuing a *certiorari* to bring up the decision ?" and answered the said question in the negative with the following observation :-

"..... On looking again into the old books I find it very well settled that the remedy by *certiorari* is never to be taken away by any statute except by the most clear and explicit words. The word "final" is not enough. That only means "without appeal". It does not mean "without recourse to *certiorari".* It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a Statute made "final", *Certiorari* can still issue for excess of jurisdiction or for error of law on the face of the record..."

83. Further, the following extract from his opinion would show as to how the courts have held on to this view of their jurisdiction despite the use of seemingly clear words rendering the decision of the given authority immune :-

"Sir Edward Coke, C.J., started this train of authority when he said, in Foster's case (5) (1614), II Co. Rep. 56b at p. 64b), that the words of an Act of Parliament "shall not bind the King's Bench because the pleas there are corma; ipso Rage" Kelynge, C.J., gave the train an impetus in 1670 in Smith's case (6) (1670), 1 Mod, Rep. 44; CALLISON SEWERS (4th Edn.) (1824) (342), when an order of the Commissioners of Sewers was brought before him. It was pointed out that the statute 13 Eliz. c. 9 enacted that they should not be compelled to certify or return their proceedings and "that they shall not be

reversed but by other commissioners", KELYNGE, C. J., disposed of the objection by saying (1 Mod. Rep. at P. 45);

> "Yet it was never doubted, but that this Court might question the legality of their orders notwithstanding; and you cannot oust the jurisdiction of this court without particular words in Acts of Parliament. There is no jurisdiction, that is uncontrollable by this court."

A few years later, in 1686, the Court of King's Bench had a case R. v. Plowright (7)(1686), (3 Mod. Rep. 94) where the collectors of the tax on chimneys had distrained on the landlord of a cottage. The Act, 16 Car. 2 c. 3, said that "if any question shall arise about the taking of any distress, the same shall be heard and finally determined by one or more justices..." The justices made a determination which was erroneous in law on its face in that it did not state sufficient grounds for making the landlord liable. The court issued a *certiorari* to quash their determination and said (3 Mod. Rep. at P. 95).

> "The statute doth nor mention any *certiorari* which shows that the intention of the law-makers was, that a *certiorari* might be brought, otherwise they would have enacted, as they have done by several other statutes, that no *certiorari* shall lie. Therefore, the meaning of the Act must be, that the determination of the justice of the peace shall be final in matters of fact only...."

In the famous case. Grenville A. College of Physicians. (8) (1700), (12 Mod. Rep. 386; 1 Ld. Raym. 454). HOLT, C.J. gave the full weight of his authority to those decisions, especially mentioning (1 Ld. Raym, at P. 469) Smith's lease (6). In 1760 in R. v. Moreley, R. v. Osborne. R. v. Reeve. R. v. Narris (9) (1760), (2 Burr. 1040), LORD MANSFIELD was faced with the Conventicle Act (22 Car. 2 c. 1), which said :

> "that no other court whatsoever shall intermeddle with any cause or causes of appeal upon this Act; but they shall be finally determined in the quarter sessions only."

Nevertheless, LORD MANSFIELD ordered *certiorari* to issue; saying (2 Burr. at p. 1042); "The jurisdiction of this court is not taken away, unless there be express words to take it away; this is a point settled".

In 1800. R. v. Jukes (10) (1800), (S. Term Rep. 542) a conviction by justices was erroneous on the face of the record, because it did not exclude a possible defence. When the defendant moved to have it quashed, the prosecutor objected (ibid, at p. 544);

> "that the defendant having elected to appeal to the sessions, the *certiorari* was in effect taken away by the Act (36 Geo. 3 c. 60), because it said that the determination of the sessions should be final."

LORD KENYON, C.J., however said *(ibdi);*

> "That would be against all authority; for the *certiorari* being a beneficial writ for the

subject could not be taken without express words..."

JOSEPH CHITTY, commenting on this case said the words "finally determine" merely prohibited a reinvestigation of the facts, see CHITTY'S GENERAL PRACTICE OF THE LAW, (vol. 2 pp. 218, 219). Finally in 1823, in R. v. Cashiobury Hundred JJ. (11) (1823) 3 Dow. & Ry. K.B. 35), the Court of King's Bench in its golden age presided over by ABBOTT, C.J. summed up the whole matter by saying that *certiorari* always lies, unless taken away, and an appeal never lies unless it is expressly given by the statute...

It was, no doubt, that train of authority which LORD SUMNER had in mind when he said in R. v. Nat Bell Liquors, Ltd. (12) (1922) (2 A.C. 12 at p. 159) :

> "Long before Jervis's Acts statutes had been passed which created an inferior court, and declared its decisions to be 'final' and 'without appeal', and again and again the Court of King's Bench had held that language of this kind did not restrict or take away the right of the court to bring the proceedings before itself by certiorari."

I venture, therefore, to use in this case the words which I used recently, in Taylor v. National Assistance Board, (13) (ante 183, at p. 185), about declarations, with suitable variations to certiorari;

> "The remedy is not excluded by the fact that the determination of the board is by statute made 'final'. Parliament gives the impress of finality to the decisions of the Board only on the condition that they are reached in accordance with the law..."

In my opinion, therefore, notwithstanding the fact that the statute says that the decision of the medical appeal tribunal is to be final, it is open to this court to issue a *certiorari* to quash it for error of law on the face of the record. It would seem to follow that a decision of the National Insurance and Industrial Injuries Commissioners is also subject to supervision by *certiorari* (a point left open by the Divisional Court in R. v. National Insurance Commr. Ex. P. Timmis, (14) (1954) 3 All England Reporter 292), but they are so well versed in the law and deservedly held in such high regard that it will be rare that they fall into error such as to need correction.

In contrast to the word "final", I would like to say a word about the old statutes which used, in express words, to take away remedy by *certiorari* by saying that the decision of the tribunal "shall not be removed by certiorari". Those statutes were passed chiefly between 1680 and 1848 in the days when the courts used *certiorari* too freely and quashed decisions for technical defects of form. In stopping this abuse the statutes proved very beneficial but the court never allowed those statutes to be used as a cover for wrongdoing by tribunals. If tribunals were to be at liberty to exceed their jurisdiction without any check by the courts, the rule of law would be at an end. Despite express words taking away *certiorari,* therefore it was held that *certiorari* would lie if some of the members of the tribunal were disqualified from acting : see R. v. Chelteham Commrs., (15) (1841), (I. Q. B. 467 at p. 474), where LORD DENMAN, C.J., said :

> "The statute cannot affect out right and duty to see justice executed ..... "So, also, if the

tribunal exceeded its jurisdiction (see Ex. P. Bradlaugh (16) (1878) 3 Q.B.D. 509) or if its decision was obtained by fraud (See R. v. Gillyard (17) (1848), 12 Q.B. 52), the courts would still grant *certiorari.* I do not pause to consider these cases further; for I am glad to notice that modern statutes never take away in express words the right to *certiorari* without substituting an analogous remedy. This is probably because the courts no longer use it to quash for technical defects, but only use it in case of substantial miscarriage of justice. Parliament now-a-days more often uses the word "final", or "final and conclusive" or some such words, which leave intact the control of the Queen's courts by certiorari."

84. In another case in *Anisminic Ltd. v. Foreign Compensation Commission and another*[18], the House of Lords had to consider the effect of the following provision of sub-section (4) of Section 4 of the Foreign Compensation Act, 1950 on the writ jurisdiction of the Queen's Bench decision :

> "The determination by the Commission of any application made to them under this Act shall not be called in question in any Court of Law."

LORD REID, with whom LORD PEARCE and LORD WILBERFORCE agreed, held that the Court was not precluded from considering as to 'whether the order is a nullity'. He observed :

> "No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity. If the draftsman or parliament had intended to introduce a new kind of ouster clause so as to prevent any inquiry even as to whether the document relied on was a forgery, I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law. Undoubtedly such a provision protects every determination which is not a nullity. But I do not think that it is necessary or even reasonable to construe the word "determination" as including everthing which purports to be determination but which is in fact no determination at all".

85. As to what amounts to a nullity, his Lordship had following to say :

> "It has sometimes been said that it is only where a Tribunal acts without jurisdiction that its decision is a nullity. But in such cases the word "jurisdiction" has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the inquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it, it may have refused to take into account something which it was required to take into account. Or it may have based its decision on matter which, under the provisions setting it

up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as mulch entitled to decide that question wrongly as it is to decide it rightly. I understand that some confusion has been caused by my having said in Reg. v. Governor of Brixton Prison, *Ex parte* Armah (1968) A.C. 192, 234 that if a tribunal has jurisdiction to go right it has jurisdiction to go wrong. So it has, if one uses "furisdiction" in the narrow original sense. If it is entitled to enter on the inquiry and does not do any of those things which I have mentioned in the course of the proceeings, then its decision is equally valid whether it is right or wrong subject only to the power of the court in certain circumstances to correct an error of law..."

86. In view of the aforesaid authoritative decisions of the Supreme Court and the English authorities of the Court of Appeal and the House of Lords, I have no hesitation in holding that the order passed by the Speaker under Paragraph 6 of Tenth Schedule remains subject to the judicial review of the High Court under Article 226 of the Constitution. In other words paragraph 6 in no manner effects the ambit of Article 226 of the Constitution of India.

87. Mr. G. Ramaswamy had also contended that the decision of the authority under sub-Paragraph (1) of paragraph 6 is not liable to review by the Supreme Court in exercise of its Special Leave jurisdiction under Article 136 of the Constitution of India, because the Speaker or, as the case may be, the Chairman of the House, is not a Tribunal.

88. In nay opinion, there is no merit in this contention. Sub-paragraph (1) of paragraph 6 confers on the authority mentioned therein power to deprive by its decision a Member of his very important right to continue to be the Member of the House. The authority named in the said paragraph discharges the judicial function of the State by virtue of this provision. The Constitutional Bench in Durga Shankar Mehta's case (supra) approvingly quoted the ratio of the Supreme Court decision in *The Bharat Bank, Ltd., Delhi v. The Employees of the Bharat Bank Ltd., Delhi*[19], that the expression "tribunal" as used in Article 136 includes within its ambit all adjucating bodies, provided they are constituted by a State and also vested with the judicial as distinguishable from purely administrative and executive functins.

89. in *All Party Hill Leaders' Conference, Shillong v. Captain W.A. Sangma and Others*[20], the Supreme Court had to decide whether the Election Commission is a Tribunal within Article 136, clause (1) of the Constitution of India. P. K. Goswami, J., who delivered the opinion of the Bench after referring to earlier decisions of this Court, namely - Bharat Bank Ltd., Delhi's case (supra) in which Industrial Tribunal constituted under the Industrial Disputes Act, 1947, was held to be a 'Tribunal' within the scope of Article 136 of the Constitution of India and *J.K. and Steel Co. Ltd., Kanpur v. The Iron and Steel Mazdoor Union, Kanpur*[21], *M/s. Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala*[22] , *Jaswant Sugar Mills Ltd., Meerut v. Lakshmichand*[23],. *The Engineering Mazdoor Sabha v. The Hind Cycles Ltd., Bombay*[24], and *Associated Cement Companies Ltd. v. P.N. Sharma*[25], observed that several tests have been laid down by this Court (Supreme Court) to determine whether a particular body or authority is a tribunal within the ambit of Article 136. The tests are not exhaustive in all cases. It is also well settled that all the tests laid down may not be present in a given case. While some tests may be present others may

be lacking. It is, however, absolutely necessary that the authority in order to come within the ambit of Article 136(1) as tribunal must be constituted by the State and invested with some function of judicial power of the State. This particular test is an unfailing one while some of the other tests may or may not be present at the same time..." Goswami, J. further referred to the following illuminating observation of the Constitutional Bench in Associated Cement Companies Ltd.'s case (supra) :

> "As in the case of courts, so in the case of tribunals, it is the State's inherent judicial power which has been transferred and by virtue of the said power, it is the State's inherent judicial function which they discharge. Judicial functions and judicial powers are one of the essential attributes of a sovereign State, and on considerations of policy, the State transfers its judicial functions and powers mainly to the courts established by the Constitution; but that does not affect the competence of the State, by appropriate measures, to transfer a part of its judicial powers and functions to tribunals by entrusting to them the task of adjudicating upon special matters and disputes between parties. It is really not possible or even expedient to attempt to describe exhaustively the features which are common to the tribunals and the courts, and features which are distinct and separate. The basic and the fundamental feature which is common to both the courts and the tribunals is that they discharge judicial functions and exercise judicial powers which inherently vest in a sovereign State.
>
> "But as we already stated, the consideration about the presence of all or some of the trappings of a court is really not decisive. The presence of some of the trapping may assist the determination of the question as to whether the power exercised by the authority which possesses the said trappings, is the judicial power of the State or not. The main and the basic test however, is whether the adjudicating power which a particular authority is empowered to exercise, has been conferred on it by a statute and can be described as a part of the State's inherent power exercised in discharging its judicial function..."

90. Section 9 of the Civil Procedure Code confers upon the civil courts the jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Explanation I to Section 9 thereof indicates that a suit in which the right to property or to an office is contested is a suit of a civil nature.

91. Membership of a House is an office, which the person successfully elected to is entitled to hold. If illegally deprived of that office the Member is entitled to challenge the order in the civil court by filing a civil suit. Articles 103 and 192 of the Constitution and paragraphs 6 and 7 of the Tenth Schedule take away the jurisdiction of the civil court in this regard and entrust the said task to the President under Article 103, to the Governor under Article 192 and to the Speaker or, as the case may be, the Chairman of the House under paragraph 6. It only means that in this regard the inherent judicial power of the State which was exercisable by a civil court has now been transferred to the authorities named in Article 103 and Article 192 of the Constitution and paragraph 6. The power that such authority exercises is 'Judicial'. This power has been conferred upon such authorities by the Constitution itself. Therefore, I have no hesitation to hold that the

authority named in paragraph 6 of the Tenth Schedule and Article 192 of the Constitution performs 'Judicial functions' whilst adjudicating upon the question as to whether the Member had become subject to any disqualification and, therefore, they are the Tribunals for the purpose of Article 136 of the Constitution of India and their decision is subject to review by the Supreme Court in exercise of its powers under Article 136 of the Constitution of India.

92. In view of the above, I hold that paragraph 6 in no manner detracts from the jurisdiction of the Supreme Court under Article 136 of the Constitution of India despite use of the word "final" in sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

93. Coming now to the analysis of paragraph 7, it may be observed that Mr. G. Ramaswamy forcefully contended that paragraph 7 was enacted to make the intention of the legislature clear that it wanted to make the decision of the authority, mentioned in paragraph 6 totally immune from any interference by any court, including the High Court and the Supreme Court.

94. To appreciate the above contention of the Additional Solicitor-General, a look at paragraph 7 is necessary. It is in the following terms :-

> "7. *Bar of jurisdiction of Courts.* - Notwithstanding anything in this Constitutin, no court shall have nay jurisdiction in respect of any matter connected with the disqualificatin of a member of a House under this Schedule."

Paragraph 7 according to Mr. G. Ramaswamy, has been enacted partly to make express what was implied in paragraph 6 and partly out of abundant caution to take care of what may have been left uncovered by paragraph 6, by the use of 'non-obstante' clause "notwithstanding anything" in this paragraph. Mr. G. Ramaswamy contends that Parliament has, by enacting paragraph 7, sough to take out from the purview of all Courts all matters connected with the disqualification of a Member of the expression "Notwithstanding anything in this Constitution" in paragraph 7 before the words "no court" clearly points to the jurisdiction of the High Court and the Supreme Court, as the Constitution creates only these two Courts and confers jurisdiction under Article 226 and Article 227 upon the High Court and *inter alia* under Article 32 and Article 136 of the Constitution upon the Supreme Court, that means, maintained Mr. G. Ramaswamy that by enacting paragraph 7, the Parliament had expressly intended to oust the review jurisdiction of the High Court and the Supreme Court in regard to the decision of the authority mentioned in paragraph 6, clause (1) of the Tenth Schedule.

95. Mr. D.D. Thakur, on the other hand, submitted that by enacting paragraph 7, the Parliament merely sought to exclude determinative jurisdiction of the courts in regard to matters connected with the disqualification of a Member and not the 'review jurisdiction' of the High Court and the Supreme Court in regard to the decision of the Speaker or, as the case may be, of the Chairman. Mr. D. D. Thakur argued that the expression "jurisdiction" occurring in paragraph 7 had acquired fixed connotation and has become a term of Art and that as a term of Art, it means that the court is entitled to enter on an enquiry into the question as to whether a Member has incurred disqualification of the kind. He maintained that the Parliament, therefore, must have used the expression "jurisdiction" in that narrow sense. He also canvassed that the expression 'matter' occurring in Paragraph 7 in relation to the disqualification of a Member would not compass

within its fold the decision of the Speaker or, as the case may be, of the Chairman, rendered under paragraph 6(1) of the Tenth Schedule.

96. In my opinion, I find no merit in the contention advanced on behalf of Mr. Thakur. The determinative jurisdiction of the courts by necessary implication had been excluded by sub-paragraph (1) of paragraph 6, which envisaged the Speaker or, as the case may be, the Chairman of the House to inquire into the question as to whether a Member had incurred the given disqualification and made his decision "final". Because by doing so, the Parliament clearly intended to oust the determinative jurisdiction of the courts. The Parliament by enacting paragraph 7, in my opinion had not only intended to make express what was implied in paragraph 6, but also intended to oust the jurisdiction of the High Court and the Supreme Court inregard to the decision of the Speaker or as the case may be, of the Chairman of the House. By using the expression "any jurisdiction in paragraph 7", the Parliament, it appears to me, had made its intention in this regard crystal clear. If the Parliament had intended merely to oust the determinative jurisdiction of the courts then it would not have used the expression "any jurisdiction" which means "any kind of jurisdiction" and when this is considered in the context of the *non-obstante* clause "notwithstanding anything in this Constitution", it clearly meant to include the jurisdiction of the Court and the Supreme Court. The High Court and the Supreme Court do not exercise any determinative jurisdiction under Article 226 and Article 136 of the Constitution. The Parliament by enacting paragraph 7, clearly intended to take away the review jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution of India in all matters connected with the disqualification of a Member of a House under the Tenth-Schedule. The expression 'matter', in my opinion, would certainly include the decision of the Speaker or, as the case may be, of the chairman, rendered in terms of paragraph 6(1), because the decision of the kind is certainly connected with the disqualification of the kind of a Member of the House.

97. Since paragraph 7 seeks to oust the jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution, respectively, it necessarily affects change in these two Articles. For clarification sake, Article 226 and Article 136 of the Constitution are reproduced in their existing form and in the form in which as a result of paragraph 7, these Articles would in fact implidly emerge :

In existing form Art, 226 would read :	*In the amended form Article 226 would read* :
"..... Notwithstanding anything in Article 32, * * * every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those	"..... Notwithstanding anything in Article 32, * * * every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority (excepting the Speaker or as the case may be of the Chairman of the House while deciding the question of disqualification of a Member in exercise of powers under

territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus, prohibition, quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.	paragraph 6(1) of Tenth Schedule of the Constitution of India) including in appropriate cases, any Government within those territories directions, orders or writs including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari,* or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose.
** ** **	** ** **
In existing form Article 136, would read :	In the amended form Article 136 would read :
"*** ***	"*** ***
(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court, or tribunal in the territory of India.	(1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India (excepting the Speaker or, as the case may be, of the Chairman of the House while deciding the question of disqualfication of a Member in exercise of powers under paragraph 6(1) of Tenth-Schedule of the Constitution of India).
(2) *** ***	(2) *** ***

The question that, however, requires examination is as to whether the Bill as such or paragraph 7 alone was required to be ratified in terms of proviso to clause (2) of Article 368 of the Constitution.

98. Before doing so, we may at this stage, consider already referred to, two other submissions of the Additional Solicitor-General of India, Mr. G. Ramaswamy. They are :-

(i) that the procedure envisaged by said proviso is directory in character and not

mandatory;

(ii) that in 'pith and substance' the Bill was meant to prescribe an additional disqualification of a Member of the House by effecting amendment in Article 191 and Article 102 and consequential changes in Article 192 and Article 101 and that any encroachment upon Article 226 and Article 136 of the Constitution is merely incidental and unavoidable.

99. So far as the directory or mandatory character of the procedure envisaged by the said proviso is concerned, the matter is not *res integra.* The Apex Court has already ruled in Kesavananda Bharati's case (supra) that the procedure envisaged by clause (2) of Article 368 of the Constitution of India is mandatory in character, as is made evident by the following observation of Bhagwati, J. (as he then was) made in Minerva Mill's case (supra) :

"It was undisputed common ground both at the bar and on the Bench, in Kesavananda Bharati's case that any amendment of the Constitution which, did not conform to the procedure prescribed by sub-clause (2) and its proviso was no amendment at all and a court would declare it invalid."

100. Mr. G. Ramaswamy, however, cited the following decisions in support of his contention that the procedure envisaged by the proviso is directory in character :-

(i) Jan Mohammad Noor Mohamad Bagban v. The State of Gurjarat and another, A.T.P. 1966 S.C. 385 at 394 (Para 18).

(ii) Kati Pada Chowdhury and others v. Union of India and others AIR 1963 Supreme Court 134 at 138 (Paras 11 and 12).

(iii) Messrs Hoechst Pharmaceuticals Limited and another etc. v. State of Bihar and others. AIR 1983 Supreme Court 1019 (Para 89).

(iv) Jawaharmal v. The State of Rajasthan and others, AIR 1966 Supreme Court 764 at 769 and 771 (Para 16).

(v) M/s Mangalore Ganesh Beedi Works v. The State of Mysore and another, AIR 1963 S.C, 589 at 590, and

(vi) Purushothaman Nambudiri v. State of Kerala, AIR 1962 Supreme Court 694 at 698 to 701.

Ratio of none of these cases is attracted to the facts of the present case, even remotely and consequently, I do not propose to deal with them in any detail particularly in view of the binding authority of Kesavananda Bharati's case (supra).

101. Now a word about the 'theory of pith and substance' floated by the counsel for the respondents in an effort to save from being declared invalid the provision of paragraphs 6 and 7

for want of ratification in terms of proviso to clause (2) of Article 368 of the Constitution of India.

102. Support for the above submission was sought from two decision in *Shankari Prasad Singh Deo and others v. The Union of India and others*[26], and *Sajjan Singh and others v. The State of Rajasthan and others, AIR 1965 Supreme Court 845*. The learned counsel for the respondents relied on paragraph 14 from Shankari Prasad Singh's case (supra), and paragraph 14 from Sajjan Singh's case (supra), which are in the following terms :-

Para 14 :

(from Shankari Prasad Singhs case, supra) :

> "It will be seen that these articles do not either in terms or in effect seek to make any change in Article 226 or in Articles 132 and 136. Article 31-A aims at saving laws providing for the compulsory acquisition by the State of a certain kind of property from the operation of Article 13, read with other relevant articles in Part III, while Article 31B purports to validate certain specified Acts and Regulations already passed, which, but for such a provision, would be liable to be impugned under Article 13. It is not correct to say that the powers of the High Court under Article 226 to Issue writs "for the enforcement of any of the rights conferred by part III" or of this Court under Articles 132 and 136 to entertain appeals from orders issuing or refusing such writs are in any way affected. They remain just the same as they were before; only a certain class of case has been excluded from the purview of Part III and the Courts could no longer interfere, not because their powers were curtailed in any manner or to any extent, but because there would be no occasion hereafter for the exercise of their powers in such cases."

Para 14 : (from Sajjan Singh's case, supra) :

> "Thus, it would be seen that the genesis of the amendments made by Parliament in 1951, by adding Articles 31A and 31B to the Constitution, clearly, is to assist the State Legislatures in this country to give effect to the economic policy in which the party in power passionately believes to bring about much needed agrarian reform. It is with the same object that the second amendment was made by Parliament in 1955, and as we have just indicated, the object underlying the amendment made by the impugned Act is also the same. Parliament desires that agrarian reform in a broad and comprehensive sense must be introduced in the interests of a very large Section of Indian citizens who live in villages and whose financial prospects are integrally connected with the pursuit of progressive agrarian policy. Thus, if the pith and substance test is applied to the amendment made by the impugned Act, it would be clear that Parliament is seeking to amend fundamental rights solely with the object of removing any possible obstacle in the fulfilment of the socioeconomic policy in which the party in power believes. If that be so, the effect of the amendment on the area over which the High Courts' powers prescribed by Article 226 operate, is incidental and in the present case can be described as of an insignificant order.

> The impugned Act does not purport to change the provisions of Article 226 and it cannot be said even to have that effect directly or in any appreciable measure. That is why we think that the argument that the impugned Act falls under the proviso, cannot be sustained. It is an Act the object of which is to amend the relevant Articles in Part III which confer fundamental rights on citizens and as such it falls under the substantive part of Article 368 and does not attract the provisions of clause (b) of the proviso. If the effect of the amendment made in the fundamental rights on Article 226 is direct and not incidental and is of a very significant order, different considerations may perhaps arise. But in the present case, there is no occasion to entertain or weigh the said considerations. Therefore, the main contention raised by the petitioners and the interveners against the validity of the impugned Act must be rejected."

Perusal of paragraph 14 from the judgment of Patanjali Sastri, J. in Shankari Prasad Singh's case (supra) would show that his Lordship made it clear in that case that the amendments in question sought to curtail some of the fundamental rights and thereby to make immune the agrarian legislations. The amendments in no manner either directly or indirectly affected the powers of the High Court under Article 226 of the Constitution and the Supeme Court under Article 136 of the Constitution. In other words the Parliament sought to take away the very right - that the party would seek the High Court or the Supreme Court to enforce. When the very right is taken away, then what is left there with a party to invoke the jurisdiction of the Court. For he would have no answer to the question from the Court, which right he was seeking the Court to enforce.

103. Chief Justice Gajendragadkar, in Sajjan Singh's case (supra) no doubt hinted at the 'theory of pith and subtance', but be clearly held that the amendments in question did not in any manner affect the jurisdiction of the High Court under Article 226 of the Constitution. And this much is evident from the above quoted Paragraph 14 of his judgement and this aspect of the matter becomes further clear from the following observations of Hidayatullah, J. (as his lordship then was), who delivered a separate opinion of his own :-

> "I have had the privilege of reading the judgment just delivered by my lord the Chief Justice. I agree with him that there is no force in the contention that the 17th Amendment required for its valid enactment the special procedure laid down in the proviso to Article 368. It would, of course, have been necessary if the amendment had sought to make a change in Article 226. This eventuality cannot be said to have arisen. Article 226 remains unchanged after the amendment. The proviso comes into play only when the article is directly changed or its ambit as such is sought to be changed. What the 17th Amendment does is to enlarge the meaning of the word 'estate' in Article 31-A and to give protection to some Acts passed by the State Legislatures by including them in the Ninth Schedule under the shield of Article 31-B. These Acts promoted agrarian reform and but for the inclusion in the Ninth Schedule they might be assailed by the provisions of Articles 14, 19 or 31 of the Constitution. Some of the Acts were in fact successfully assailed but the amendment makes them effective and invulnerable to the three articles notwithstanding Article 13 of the Constitution. In Shankari Prasad's case, 1952 SCR 89 when the

Constitution (First Amendment) Act was passed and Articles 31-A and 31-B and Ninth Schedule were introduced, the effect of that amendment on Article 226 was considered and it was held that the Amendment had not the effect visualised by the Proviso to Article 368. The reasoning in that case on this point applies *mutatis mutandis* to the 17th Amendment."

104. Paragraph 7 of Tenth Schedule of the 52nd Amendment Act in my view directly affects the jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution of India, respectively, in that - when the Speaker by his order deprives a member of his membership of the House, the Member is deprived from challenging the correctness and legality of that order in the High Court under Article 226 and the Supreme Court under Article 136 of the Constitution of India.

105. In substance, paragraph 7 effects change in provisions of Article 226 and Article 136 of the Constitution of India, as already shown.

106. The theory of pith and substance merely implies that the Parliament in exercise of its constituent power just could not have amended the Constitution by way of adding another item of disqualification in Article 102 and Article 191 of the Constitution without affecting the jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution and that the object of amendment was to prescribe a disqualification of the Member for a given reason on account of some action and omission on his part, rather than to curtail the jurisdiction of the High Court and the Supreme Court under Article 226 and Article 136 of the Constitution respectively, as such. Such is not the case here. Parliament without detracting from the jurisdiction of High Court and the Supreme Court under Article 226 and Article 136 of the Constitution respectively could effect the amendment of the Constitution by adding the additional disqualification in question.

107. For the reasons, aforementioned, I hold that the doctrine of pith and substance is not attracted to the facts of the present case.

108. Now the next question that requires to be examined is that where the Bill affecting Amendment to the Constitution is composite in character, in that - it partly amends or affects such provisions of the Constitution as would require ratification by the State Legislatures and partly such provisions of the Constitution as require no such ratification by the State Legislatures, then 'whether such a Bill, as such, is to be ratified by the State Legislatures or only the provision, which amends those provisions of the Constitution, which are referred to in proviso to clause (2) of Article 368 of the Constitution of India ?

109. In my opinion only such amending provision, as amends the provision of any of the Articles, referred to by the proviso to clause (2) of Article 368 of the Constitution that is required to be ratified by the State Legislatures and not the entire Bill as such, although the entire Bill may be transmitted to the State Legislatures to enable them to understand the context in which a provision that required ratification had come to be enacted by the Parliament. If the entire Bill as such was intended to be ratified as envisaged by the proviso in question, then the framers of the Constitution would have substituted the words in the brackets for the underlined words :-

"Provided that if *such amendment* (the Bill) also seeks to make any change in -

(a) article 52, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, - or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article, -

the *amendment* (the Bill) shall also require to be ratified by the Legislature of not less than one-half of the States by resolutions to that effect passed by those Legislatures before *the Bill making provision for such amendment* (the Bill) is presented to the President for assent."

In my opinion the proviso, in question envisages :-

(a) ratification of only such a provision of Bill, as effects any change in the Articles and the provisions of the Constitution covered by the said proviso;

(b) that such a ratification of the amendment must be secured before the Bill making provision for such amendemnt is presented to the President for his assent i.e. it excludes *post facto* ratification by the Legislatures of the State.

It means that a provision in the Bill, which seeks to make any change in any of the provisions enumerated by the proviso to clause (2) of Article 368 of the Constitution, even when ratified by the majority of the Legislatures of the State after the Bill containing the same had received assent of the President, it would not be considered constitutionally valid. To acquire constitutional validity such amending provisions should have received requisite ratification from the given number of State Legislatures before the Bill containing such provisions had been assented to by the President.

110. In view of the above, paragraph 7 of the Tenth Schedule having not been ratified by the Legislatures of the State in terms of proviso to clause (2) of Article 368 of the Constitution, the same is held to be invalid and is struck off as such from the Tenth Schedule.

111. The next question that falls for consideration is as to what is the effect of invalidity of paragraph 7 on the remaining provisions of 52nd Amendment Act.

112. Mr. Shanti Bhushan, the learned counsel for the petitioners, argued that paragraph 7 is an integral part of Fifty-Second Constitution Amendment, in - that the Parliament had intended that if the menace of defection by the Members of the State Legislatures or of the two houses of the Parliament was to be checked, then the orders of the Speaker passed in terms of paragraph 6 disqualifying such Members in terms of paragraph 2 should be made immune from any challenge in the courts, including the High Courts and the Supreme Court. That such was the intention of the Parliament, was sought to be substantiated by a reference to the speech of the

Law Minister, Mr. A.K. Sen in the House, (Lok Sabha Debates, Vol. 1, p. 186), who while speaking on the Fifty-Second Amendment Bill said :-

> "The other questions are about the Speaker's authority. It was our clear intention from the very beginning that we are not going to allow this matter to be dilly-dallied and tossed about in the courts of law or in the Election Commission's Office. I had myself appeared in the Courts along with late Kanhaiya Lal Mishra Ji for winning our symbol. Babuji is there. He was the President of our party then. We used to go very regularly and Shri Siddhartha Shankar Ray was assisting me at that time. But the time we won back our symbol, it become worthless, becuase we had already won the election not on a pair of bullocks, but on a cow and a calf. Therefore, that type of delay should not be tolerated any more. We want a quick decision. If this Bill is to be effective and if defection is to be outlawed effectively, then we must choose a forum which will decide the matter fearlessly and expeditiously. This is the only forum that is possible. With these words I commend the Motion for consideration."

113. What is to be seen is as to whether in the absence of para 7, the Constitution (Fifty-Second Amendment) Act, 4985 remains functional or not.

114. In my opinion, paragraph 7 is clearly severable and its non-existence would not in any manner affect the working of the enactment, nor would it defeat, the basic underlying purpose of the enactment in question.

115. Now the stage is set to consider the primary contention of Mr. Shanti Bhushan that paragraph 2 of Tenth Schedule is *ultra vires* the constituent power of the Parliament as the said paragraph was destructive of the three basic features of the Constitution earlier noted, which form part of the basic structure of the Constitution.

116. So far as the question of paragraph 2 being destructive of two basic features of the Constitution, namely - Federal character and the separation of powers between Legislature, Executive and Judiciary, is concerned, it may be observed that this contention is noted only to be rejected. Paragraph 2 even distantly makes no encroachment on the aforesaid allegedly two basic features of the Constitution.

117. I have now to examine as to - whether 'democracy' or 'Parliamentary democracy' is a basic feature of the Constitution and forms part of the basic structure of the Constitution and whether paragraph 2 is destructive thereof.

118. In Kesavananda Bharati's case (supra) the Supreme Court has ruled that the basic structure or basic frame-work of the Constitution cannot be eroded or destroyed by Parliament in exercise of constituent power under Article 368 of the Constitution of India.

119. The question that has to be answered each time by the court, whenever an amendment of the Constitution is challenged as being *ultra vires* the constituent power of Parliament, is as to whether the given amendment erodes or destroys the basic structure of the Constitution. Before one can answer that question - one must know as to what constitutes the basic structure or basic

frame-work of the Constitution.

120. The starting point of inquiry would be as - to "who has given the Constitution and to whom ?"

The quest for a civilized existence over a period led the human beings by trial and error method to the discovery that real freedom in contra-distinction to absolute freedom is untenable without orderly and settled collective existence in shaping and maintaining of which they as free individuals would have a say. Orderly collective existence is achievable only when in every matter there is only one decision and not as many decisions as are the individuals, who have voice in the matter. That is possible only if decision is taken unanimously or by a majority or by drawing of lots and then it is respected as if it was taken unanimously. Where individuals who have a voice in the matter are so large and there are so many matters that call for a decision as to make it utterly impossible to take all the decisions or to take such decisions in time, then out of necessity there would occur a search for the alternative. The alternative suggests itself. The free people would decide to select such number of them as their representative as would be able conveniently to meet as often as the requirement of decision-making dictates. Free individuals, it would necessarily follow, would like to select such representatives according to their free will and choice and again either unanimously or by majority. The above unmistakably suggests following basic formulations or assumptions :-

(i) *inter se* equality among such individuals or citizens;

(ii) right to life and liberty;

(iii) decision-making either unanimously or by majority or by drawing of lots in case of a tie.

(iv) accountability of the representatives to the people who had selected them;

(v) the free people (either directly or through their representatives) deciding to create a body of fundamental laws for regulating their affairs-political, economic and social - from which it necessarily follows that they meant to be governed by laws and not by any one of them individually or by a group of them. The individuals could hold differing opinion as to what is the law, which they have to follow and bow to in a given situation. If their differences are not resolved, then it can lead to unsettled conditions and break-up of the fabric of their society that they had constructed. The law abiding disputants, *inter alia* when they are unable to settle the disputes mutually, would naturally elect to entrust the resolving of their disputes and differences to someone amongst themselves, who would inspire confidence in regard to his objectivity and fair-mindedness as also competency.

121. For the purpose of examining as to whether paragraph 2 is destructive of any of the basic feature of the Constitution, our aforesaid theoretical inquiry that free people could have agreed to live to be part of a collective orderly and settled existence only on the basis of there being mutual agreement on the aforesaid *inter alia* basic postulates, need go no further.

122. Now, it is to be seen as to what extent the free people of this country had recognised the aforesaid basic postulates or assumptions to be so by giving them a concrete shape in the Constitution, which they gave to themselves on the 26th of January, 1950 :

Preamble to the Constitution, which admittedly had been voted upon by the Constituent Assembly like any other provision of the Constitution in express terms records :

> "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens :
>
> JUSTICE, social, economic and political;
>
> LIBERTY of thought, expression, belief, faith and worship :
>
> EQUALITY of status and of opportunity; and to promote among them all
>
> FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;
>
> IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

123. The implication of the above statement is clear and unambiguous that the people, who gave the said Constitution to themselves were free and sovereign people. They also spelled out in all solemnity the basic objectives, which by enacting the Constitution, they intended to achieve and the kind of India they wanted to constitute and live in. Some of the theoretical postulates that I had earlier spelled out, namely - Liberty, Equality, *et cetera,* find a mention in the Preamble.

124. Right to life and liberty received recognition in Article 21 of the Constitution. Right to equality is recognised in Articles 14, 15, 16 and, 17 of the Constitution of India.

125. Recognition of the fact that the people would act through their representatives is envisaged by Articles 79, 80, 81, 168, 169, 170 and 171; that their representatives shall take such decisions on their behalf by a majority is recognised in Article 100 and Article 189 of the Constitution.

126. Article 99 and Article 188 envisages that Members of the two Houses of Parliament and the Members of the Legislative Assembly or the Legislative Council of the State shall before taking seat; shall make and subscribe before the President, as the case may be, the Governor, or some person appointed in that behalf, by them, on oath or affirmation according to the form set out for the purpose in the Third Schedule. A sample of said form reads as under :-

> *"Form of oath or affirmation to be made by a member of parliament* :-
>
> "I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People)

do swear in the name of God / solemnly affirm that I will bear

true faith and allegiance to the Constitution of India as by law established, that I will uphold the soveregnty and integrity of India and that I will faithfully discharge the duty upon which I am about to enter."

Clause (1) of Article 105 and Clause (1) of Article 194 in express terms say that Members of the House shall enjoy freedom of speech in Parliament.

127. From the above, it is clear that the basic theoretical formulation that free people would decide to live in an organised orderly settled collective existence only if the decisions concerning them and their welfare and the affairs of the organization with which they have come to connect themselves and have become integral part thereof, would be either taker by them freely or by their freely selected representatives, enjoying similar freedom of choice in the matter, have found recognition in the Constitution which have provided that every eligible person of 21 years of age would be entitled to enroll as a voter and would participate in electing a Member to represent him to the Legislative Assembly or Legislative Council of the State and to the Parliament; that such elected or nominated Member of the House shall take oath before entering upon his seat *inter alia* to abide and up-hold the Constitution of India and faithfully carry out his duty as a Member.

128. His primary duty, as I understand it, is to take part in the proceedings of the House, express his opinion freely on matters that come up for consideration in the House and to cast his vote on merits of a given case on the dictates of his conscience with a view to advance the public interest as opposed to his personal and self interest.

129. In *Smt. Indira Nehru Gandhi v. Shri Raj Narain*[27], H.R. Khanna, J., in paragraph 198 of page 2349 observed :-

> "All the seven Judges who constituted the majority were also agreed that democratic set up was part of the basic structure of the Constitution. Democracy postulates that there should be periodical elections, so that people may be in a position either to re-elect the old representatives or, if they so choose to change the representatives and elect in their place other representatives. Democracy further contemplates that the elections should be free and fair, so that the voters may be in a position to vote for candidates of their choice. Democracy can indeed function only upon the faith that elections are free and fair and not rigged and manipulated, that they are effective instruments of ascertaining popular will both in reality and form and are not mere rituals calculated to generate illusion of deference to mass opinion. Free and fair elections require that the candidates and their agents should not resort to unfair means or malpractices as may impinge upon the process of free and fair elections...".

130. From the above observations of Khanna, J. it is clear that according to the ratio of Kesavananda Bharati's case (supra) 'democracy' is the basic feature of the Constitution.

Democracy in its primary essence means a polity in which people govern themselves through their freely elected representatives. It would not be a democratic polity in which people are not free to elect their representatives in a free and fair manner or in which representatives so elected are not free to take a decision where a decision is called from them. I, therefore, broadly agree with Mr. Shanti Bhushan (subject to slight reservation, which would be presently mentioned) when he contends that democracy envisages existence of a civilized society governed by self-evolved laws; that the laws and norms that such a society evolves for its governance shall be reflective of the views of the majority freely expressed. In other words the decision by majority in a democratic society is inseparable from the concept of democracy. Parliamentary democracy merely substitutes the participation of elected representatives of the citizens in the decision and law-making process in place of entire citizenry whose participation as such due to increased numbers of the citizens or the complexity of the situation may become impossible. The Parliamentary democracy in its functioning therefore has to conform to the basic concept of democracy hinted at above; i.e. that the elected representatives of the people are entitled not only to the freedom of speech in the House, but also to the use of their vote in accordance with the dictates of their conscience, that no control or restraint by anybody, authority, body of persons or a political party, on whose tickets they may have been elected to the House, can be allowed to dictate to the Member as to what he has to say in the House and how he has to exercise his vote, because that would be destructive of the spirit of democracy. Law sanctioning any such interference enacted by a State Assembly or Parliament would be unconstitutional as being violative of the basic structure of the Constitution.

131. Mr. Shanti Bhushan also pressed into service views of such authors as Hermen-Finer from his Book The Theory and Practice of Modern Government-IVth Edition; Mr. K.C. Wheare from his Book Legislatures; Mr. Robert White from his Book American Government - Democracy at Work, besides, referring us to a decision of the House of Lords in *Amalgamated Society of Railway and Osborne*[28], Mr. Shanti Bhushan placed pointed reliance in support of the submission aforementioned on the underlined observations of Lord Shaw of Dunfermline :-

> "The position of a member of Parliament supported by the contributions of the society is accordingly this. As stated, (1) he is by the society's rules "responsible to" as well as paid by the society (2) he must have as a candidate signed and accepted the conditions of the Labour party; (3) while that party has its own policy he must accept its constitution, and "agree to abide" by the decisions of the parliamentary party in carrying out the aims on the constitution. Under these aims the first object of the constitution must be included, namely, maintaining the Parliamentary Labour party's own policy. Unless a member becomes bound to the society and to the Labour party by these conditions, and shapes his parliamentary action in conformity therewith, and with the decisions of the parliamentary party, he has broken his bargain. *Take the testing instance : should his view as to right and wrong on a public issue as to the true line of service to the realm, as to the real interests of the constituency which has elected him, or even of the society which pays him, differ from the decision of the parliamentary party and the maintenance by it of its policy, he*

has come under a contract to place his vote and action into subjection not to his own convictions, but to their decisions. My Lords, I do not think that such a subjection is compatible either with the spirit of our parliamentary constitution or with that independence and freedom which have hitherto been held to lie at the basis of representative government in the United Kingdom. (Emphasis added).

It is no doubt true that a member, although party to such a contract of subjection, would in point of law enter Parliament a free man, because the law would treat as non-enforceable and void the contract which purported to bind him. And it is no doubt true that parties remaining outside of and making no appeal to the law, this subjection may arise in practice through the operation upon certain natures of various motives, including notably those of sycophancy or fear. But when the law is appealed to lend its authority to the recognition and enforcement of a contract to procure subjection of the character described with the concurrents of money payments and the sanctions of fines or forfeitures, the law will decline such recognition or enforcement because the contract appealed to is contrary to sound public policy. I should be sorry to think that these considerations are not quite elementary. Ana they apply with equal force not to labour organizations alone, which operate by administering under, it may be, careful supervision - the subscriptions of its members, but with even greater force to individual men, or organizations or trusts of men using capital funds to procure the subjection of members of Parliament to their commands. In this latter case, indeed, adhesion to the principle is of a value all the greater because its violation might be conducted in secret. It needs little imagination to figure the peril in which parliamentary government would stand if, either by the purchase of single votes, or by subsidies for regular support, the public wellbeing were liable to betrayal at the command and for the advantage of particular individuals or classes.

It would be superfluous to note in detail how deeply embedded this principle is in the law of England on the subject of parliamentary government. On the subject of the predominating consideration Coke remarks (4 Inst. 14) ..... *And it is to be observed, though one be chosen for one particular county or borough, yet when he is returned and sits in Parliament he serveth for the whole realm."*

Blackstone in the passage cited in the Court below adopts the same language, and Locke's well-known view in his second Essay on Civil Government is stamped with the authority of the great commentator.

For my part, I look upon the whole of this doctrine as necessarily flowing from the fundamental idea that Parliament, originally conceived as a body of advisers to the King, is free - free in its election and free also in its advice. This fundamental idea of freedom has stood upon the Statute Book for many centuries. By 3 Edw. 1, c5, it was enacted : "And because elections ought to be free, the King commandeth upon great forfeitures that no man by force of arms, nor by malice or menacing, shall disturb any to make free election". Of this statute, which Coke describes as "excellently penned." he comments : "Now that electors might make free and due elections without displeasure or fear thereof, by Act of Parliament, as a sure defence, the King commandeth the same, upon grievous forfeiture." Another early and most cogent illustration is that of 7 Hen. 4, c. 15, whereby it was provided that knights of shires for the Parliament were to

be chosen *"libere et indifferenter sine prece out precepto."*

It is no doubt true, my Lords, that the public records and the Statute Book shew that the protections which were thrown around freedom were largely in the shape of securing the safety of electors and constituencies in the exercise, without interruption, constraint, or corruption, of the franchises they enjoyed. But all this would have been a mockery if, after purity and freedom had been enjoined amongst electors and constituencies, the representative so elected was not himself to be in the possession of his freedom in vote, advice, and action - not to be free, but to be bound, bound under a contract, to submit these, freedom in vote, advice, and action - not to be free, but for salary and at peril of loss, to the judgment of others. Locke clearly discerned the interrelation of these two things. The latter, as well as the former, is ranked among those breaches of trust which would amount to the very dissolution of government. The former is dealt with in the phrases as to the action of the magistrate, "if he employs the force, treasure, and offices of the society to corrupt the representatives or openly to pre-engage the electors, and prescribe what manner of persons shall be chosen. For this to regulate candidates and electors and new model the ways of election, what is it but to cut up the Government by the roots, and poison the very fountain of Public security." The latter is dealt with in the remainder of the same sentence as follows : *"For the people having reserved to themselves the choice of their representatives, as Lite fence to their properties, could do it for no other end but that they might always be freely chosen, and so chosen freely act and advise, as the necessity of the commonwealth and the public good should upon examination and mature debate be judged to require."*

These principles have been frequently subject to evasion and attack, sometimes open and sometimes secret, but they have never been overthrown; and they apply to labourists' men, to capitalists' men, or as in former times, to King's men. Whether they form one of the chief glories of the Constitution, making this island "the envy of less happier lands", may be treated by the constitutional historian; with that I have not here to do; but in my opinion they do form part of the very body of our public law.

Granted, however, that no conditions are imposed subversive of or imperilling their freedom, it will be observed that nothing that has been said attaches a taint or shadow of illegality to the payment of members of Parliament. Such payment may be a tribute to character, or a recognition of talent, coupled with a desire of that these should be secured for the service of the State, or it may spring from a legitimate wish that the views, the needs, the perils of particular, and it may be large, classes of His Majesty's subject should be expressed in Parliament by those who speak with the authority of practical experience.

Thus far I accede to the powerful argument for the appellants. But when that argument was pushed further, and especially to the two steps now to be noted, I must decline my assent. (1) It was said that experience shews that men of high honour have felt themselves free to accept obligations similar to those contained in the constitution of the Labour party, and that those obligations have not in practical life proved restraints upon their independence, or manacles upon their judgment. It may be that this is so, and its accord with one's experience of such men makes the argument strong; and it may be also be that in such individual cases men stand so deservedly high in the councils of the controlling party that no dissonance between their views and its views will in practice arise. All this within the voluntary sphere is powerful. But in my opinion such instances should not be allowed as an argument for legalizing the obligations of subjection to

which I have referred, or for imperilling the broad constitutional guarantees of freedom. (2) It was argued that if individual classes were not to be allowed on their own terms to make payment of members of Parliament their security from the possible dangers of such operations could only be obtained at too high a price, namely, the payment of members as of right and from the public treasury. I do not think such considerations clarify the legal solution or should weigh with a Court of law.

In brief, my opinion accordingly is; the proposed additional rule of the society that "all candidates shall sign and respect the conditions of the Labour Party, and be subject to their 'whip' the rule that candidates are to be "responsible to and paid by the society," and, in particular, the provision in the constitution of the Labour party that "candidates and members must accept the constitution, and agree to abide by the decision of the parliamentary party in carrying out the aims of this constitution," are all fundamentally illegal, because they are in violation of that sound public policy which is essential to the working of representative government.

Parliament is summoned by the Sovereign to advise His Majesty freely. By the nature of the case it is implied that coercion, constraint, or a money payment, which is the price of voting at the bidding of others, destroys or imperils that function of freedom of advise which is fundamental in the very constitution of Parliament. *Inter alia,* the Labour party pledge is such a price, with its accompaniments of unconstitutional and illegal constraint or temptation.

Further, the pledge is an unconstitutional and unwarantable interference with the rights of the constituencies of the United Kingdom. The Corrupt Practices Acts, and the proceedings of Parliament before such Acts, were passed, were but machinery to make effective the fundamental rule that the electors, in the exercise of their franchise, are to be free from coercion, constraint, or corrupt influence; and it is they, acting through their majority, and not any outside body having money power, that are charged with the election of a representative, and with the judgment on the question of his continuance as such.

Still further in regard to the member of parliament himself, he too is to be free; he is not to be the Paid mandatory of any man, or organization, of men, nor is he entitled to bind himself to subordinate his opinions on public questions to others, for wages, or at the peril of pecuniary loss and any contract of this character would not be recognized by a Court of law, either for its enforcement or in respect of its breach. Accordingly, as it is put in the words of Fletcher Moulton L.J., "Any other view of the fundamental principles of our law in this respect to my mind, leave it open to any body of men of sufficient wealth or influence to acquire contractually the power to exercise that authority to govern the nation which the law compels individuals to surrender only to representatives that is, to men who accept the obligations and the responsibility of the trust towards the public implied by that position."

132. Since the views expressed by the authors aforementioned, in regard to the right of a Member of the House, to act in the House in accordance with the dictates of his own conscience, find support in the aforesaid observation from the House of Lords, it is unnecessary to burden this Judgment by quotations from their Books.

133. Mr. Shanti Bhushan has also contended that the existence of the political parties and their role in the law-making process and the governance of the country has not been recognised by the

Constitution and, therefore, political parties or anybody on its behalf cannot exercise any control whatsoever over the Members, who had been elected on its ticket in the discharge of their duty and function, as such, in the House.

134. In opposition to Mr. Shanti Bhushan's above contention, equally extreme and untenable stand appears to be taken by Mr. G. Ramaswamy and Mr. D. D. Thakur, when they contend that the existence of political parties and their role in the governance is the only reality and the freedom of expressions and vote in the House by the elected representatives adverted to by Mr. Shanti Bhushan is a mere myth; that the elected representative ought to say in the House what the party directs him to say and ought to exercise his vote in the House in accordance with the dictates and directions of the party on whose ticket he had been elected to the House; that the views of Burke and John Stuart Mill quoted by the given authors and projected by Mr. Shanti Bhushan as constituting the essence of the democracy, refers to times when the political parties, as we now know them, had not made their appearance and there stood no intermediary between the representative and the electorate. They also sought support for the above view from such authors as :

> "Parliamentary Government in England - by Harold J. Laski, Constitutional Government and Democracy - by Carl J. Fredricis; The People and the Constitution - by Cecil S. Emden; Cabinet Government - by Sir Ivor Jennings : Legislatures - by K.C. Wheare : Democratic Theory - by Givonni Sartori : Reflections on Government - by Ernest Barker : The Queen's Government - by Sir Ivor Jennings : The Theory and Practice of Modern Government - by Herman Finer and Government and Politics of Britain - by John P. Mackintosh."

135. In my view the important role that the political parties play in the governance of the country and in the election of the Members of the Parliament and of the Legislative Assembly of the States is all too evident to require to be buttressed by a reference to the views of celebrated authors in this regard. One is, however, sceptical about accepting the extreme claim made on behalf of the political party that a Member must always and in all respects feel bound to act in accordance with the dictates of the political party in the discharge of his function and duties in the House, as a Member of the House.

136. The extreme stand of Mr. Shanti Bhushan too does not commend to me notwithstanding the forceful support, which he receives for his above submission from Mr. N.A. Palkhivala, the noted jurist, who in his Book "Our Constitution Defaced and Defiled (1974 Ed.)" canvassed :-

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

137. If it would amount to running away from reality, for Mr. Shanti Bhushan, the learned counsel for the petitioners, to advocate that the existence of the political parties and the role played by them in the governance of the country has not been recognized by the Constitution and, therefore, elected representatives in the exercise of their functions, as such, cannot at all and in any manner whatsoever be controlled or restrained by the political party of which they are Members, it would also amount to total emasculation of elected representatives in the exercise of their functions, as such, if on the other hand, the extreme proposition propounded by the counsel for the respondents is to hold sway, for it would result in making of the elected representative a mere rubber-stamp in the hands of the political parties and that in my view would be totally destructive of his representative character and thus of democracy which is one of the basic features of the Constitution and forms part on the basic structure of the Constitution.

138. There can be no gainsaying the fact that the existence of the political parties and their role in elections and in the governance of the country is a reality, and the Constitution of India is not that totally innocent of their existence as advocated by Mr. Shanti Bhushan. In this regard, I may refer to the following observations of their Lordships of the Supreme Court in *Kanhiya Lal Omar v. R.K. Trivedi and others*[29],

> "It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be it a donkey or an elephant, does give rise to an unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguished under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis - in other words, "on systematized differences and unresolved conflicts." That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution Amendment) Act, 1985, there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country."

139. If the existence of the political party and the role that it plays in the governance of the

country is a reality, that does not mean that the elected representative of the people is to become a mere tool in the hands of a political party. Free and fair voting in the basic and essential attribute of democracy and thus a component part of basic structure of the Constitution, that the fact that founding fathers of the Constitution were aware of this aspect of the democracy is evident from the fact that they entrusted the conduct of the elections in the hands of an authority, known as the Chief Election Commissioner whose authority and independence in its functioning they made every effort to secure from outside interference, as is evident from the provisions of clauses (5) and (6) of Article 324 of the Constitution, which are in the following terms :-

> "324. *Superintendence, direction and control of elections to be vested in an Election Commission.* - (1) to (4) ..... (5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine :
>
> Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner, shall not be varied to his disadvantage after his appointment :
>
> Provided further that any other Election Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner."
>
> "Clause (6). The President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission, or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (I)."

140. Parliament enacted Representation of People Act, 1951 (for short 'the 1951 Act') in exercise of power under Article 327 of the Constitution of India. The provisions of Section 123 of the 1951 Act, enumerates corrupt practice in elections on the proof of which on the part of a candidate envisages declaration of his election void. Chapter III of part VII of the 1951 Act provides list of the electoral offences and also prescribes penalty and punishments therefor. If the above-mentioned provisions of clauses (5) and (6) of Article 324 of the Constitution and the above quoted provisions of 1951 Act were meant to effectively insure free and fair elections of the representative, provisions of Article 105 and Article 194 were enacted by the authors of the Constitution to insure his free functioning in the House to which he stands elected.

141. Insuring of 'absolute freedom of action' and expression to an individual or his representative whilst living in an organized society is not only an impossibility, but is a mirage and an illusion. The approach can be no different in regard to the functioning of an elected representative in the House. The role of the umblical cord that binds him with the political party of which he is a member and the role that the political party has come to play in the governance of the country cannot be ignored altogether. Therefore, one has to strike a balance. It is impossible to achieve the successful democratic governance of a country even of a small country, what to talk of the

country of the size of India, without the active involvement of the political parties. If a representative elected not only on the ticket but also on the strength of the political ideology of the party and the men and material resources thereof, is to renounce allegiance to his party, then not only the political parties, as a sequence thereof, would become irrelevant, but it would also become impossible to ensure stability of the government and in consequence freedom of the country, more so in the case of a country like India, whose past history holds out ample proof of the fact that it is the instability of its government, - in other words a weak government that had been a standing invitation to invaders and the cause of the ultimate subjugation of this country.

142. That the defection from the political parties by Members elected to the House on their tickets, could destablize the Government and that such defections by M.L.As. and M.Ps. which was mostly for selfish reasons, has assumed grave proportions, is not a figment of imagination. As per Report of the Committee on Defections (Part I), which was set up by the Government of India in pursuance of a resolution, passed by the Lok Sabha on 8th December, 1967 - whereas only 542 Members defected between First and Fourth General Elections, as many as 438 Members defected in twelve months between 1967 and 1968. As many as 116 Members out of 210 defecting Legislators were made Ministers. As a result of defections, a number of governments fell and chaotic and instable conditions prevailed in number of such States. It was in the wake of such conditions caused by defections of large number of Members mostly for self-aggrandizement that the Parliament passed the following resolution on 8th December, 1967, contained in the report of the Committee - "Committee on Defections - Part 1" :-

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

143. If the result of insuring absolute freedom of the kind to the elected representative is also, in the ultimate result, to amount to the insuring of slavery of the country, then such absolute freedom to the elected representative could never have been the prized objective of the framers of the Constitution. At the same time, they could not have intended the snuffing out of the very spirit of democratic functioning by authorising such an amendment of the Constitution as would result in totally stifling the voice of the elected representative in the House and its translation into action by voting in the House in accordance with the dictates of his conscience. If such had not been the intention of the framers of the Constitution, then the insuring of freedom of speech in the House by enacting Article 105 of the Constitution would hardly make any sense. For a Member of the House would not only look foolish, but become an utter object of contempt and malacious talk about his integrity if after having expressed views against a proposal before the House he was to vote in favour of the proposal not because he had changed his views in the meantime but because somebody had pressurised and dictated him to do so.

144. Any amendment of the Constitution that was to lead to such a result would be *ultra vires* the basic structure of the Constitution as it would be destructive of democracy/parliamentary democracy.

It is to be seen whether the Parliament by enacting paragraph intended such absolute curbs at the instance of a political party on its members.

145. Before embarking upon the interpretation of paragraph 2 and 3 of Tenth Schedule, it is just as well to make oneself aware of the principles and canons of interpretation that are kept in view by the courts whilst interpreting a statute.

146. Judicial precedents and celebrated texts on interpretation gave primacy to two facts, which in a sense are synonymous :

(i) the purpose underlying the enactment of the statute;

(ii) the intention of the Legislature.

In this regard notice may be taken in the first instance of the following passage from the celebrated text of Statutory Construction by Crawford - at pages 269 and 271 - highlighting the fact that it is the intent of the legislature which constitutes the law of any statute which should be given effect to, even if it necessitates supplying of omissions :

> "But, inasmuch as it is the intention of the legislature which constitutes the law of any statute and since the primary purpose of construction is to ascertain that intention, such intention should be given effect, even if it necessitates the supplying of omissions, provided, of course, that this effectuates the legislative intention ....."
>
> ".... It would seem that only time the omitted case might be included within the statute's operation, would be when the legislature intended to include it but actually failed to use language which would, on its face, cover the omitted case. The inclusion would then be justified, if from the various intrinsic and extrinsic aids, the intent of the legislature to incorporate the omitted case, could be ascertained with a reasonable degree of certainty...."

Lord Blackburn in Charles Bradlaugh v. Clarke, (1883) vo. VIII, A.C. 354, expounded the same view in the following words :

> "All statues are to be construed by the Courts so as to give effect to the intention which, is expressed by the words used in the statute. But that is not to be discovered by considering those words in the abstract, but by inquiring what is the intention expressed by those words used in a statute with reference to the subject-matter and for the object with which that statute was made; it being a question to be determined by the Court, and a very important one which was the object for which it appears that the statute was made."

The meaning of the words is to be found not so much in strict etymological propriety of language, or even in popular use, as in the subject or occasion on which they are used and the object that is intended to be attained. The subject-matter with which the legilature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the legislature in passing the Act.

In *Shiekh Gulfan and others v. Sant Kumar Ganguli*[30], it has been observed in this connexion by their Lordships as follows :-

> "...often enough, in interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is why in deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision in included, and the policy underlying the statute assume relevance and become material..."

147. It is also settled principle of interpretation that literal or grammatical meaning of the words and expressions used, particularly in the context of the Constitutional Law, is to be avoided, where the literal meaning of the words used do not adequately convey the true purpose and intent of the Legislature then the provision in question could be made worthy of conveying that intent even if a word or two here or there is subtracted or added or even whole sentence is added or subtracted therefrom. The following observations in this regard of Venkatarama Ayyar, J. in *Tirath Singh v. Bachittar Singh and others*[31] , clearly underscore the desirability of the above indicated course of action in the given situation of textual inadequacy of the given provision :-

> "It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well-established that, 'where the language of a statute', in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a Construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

148. It is also well recognized principle of construction that while construing a statute the courts have to so read the provision of the Act as to steer it clear of the vice of unconstitutionality.

149. Paragraph 2 of Tenth Schedule, which is now required to be interpreted, is in the following terms :-

> "2. *Disqualification on ground of defection.* - (1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House -
>
> (a) If he has voluntarily given up his membership of such political party; or
>
> (b) 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.

Explantion. - For the purposes of this sub-paragraph. -

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

(b) a nominated member of a House shall, -

(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party;

(ii) in any other case, be deemed to belong to the political party of which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

(2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be disqualified for being a member of the House if he joins any political party after such election.

(3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of article 99 or, as the case may be, article 188.

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

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

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

Perusal of paragraph 2 would show that is envisages disqualification from membership of the House on two grounds :-

(i) voluntary resignation from the political party he (the member) belongs to;

(ii) that he (the member) votes or abstains from voting in the House contrary to any direction issued by the Political party he belongs to, or any other person or authority authorised by it.

150. The basic purpose of enacting Fifty-second Constitution Amendment was to make it difficult for the Member of the House to change sides. For such act of theirs can destablize the democratic system. The defection for instance from opposition can pave the way for a one party rule and eventually to one-man rule and the defection from the ruling party can lead to the fall of the party Government. Frequent defections to and fro can make it difficult for any party Government to function effectively. Such instability can grievously weaken the country. If the Members were free to change sides that freely under the cover of their democratic right, then it may lead to the extinction of democracy itself. Mr. Shanti Bhushan, it may be recorded, therefore, readily and rightly conceded that paragraph 2(1) (a) was not destructive of democracy/parliamentary democracy and thus of the basic structure of the Constitution and that the said provision is constitutionally valid.

151. Now the next question that in the context of paragraph 2 falls for consideration is as to whether provision of paragraph 2(1) (b) in its basic import was intended to serve the same purpose as was sought to be achieved by paragraph 2(1) (a). In other words whether the Parliament by enacting paragraph 2(1) (b) had intended to curb such voting or abstention from voting on the part of the Members of the House, contrary to the direction issued by the political party one belonged to, as would lead to such sinister results as had been cornprehended by me while discussing the defection in the context of paragraph 2(1) (a).

152. Literal reading of the expression "any direction" occurring in paragraph 2(1) (b) would mean each and every direction issued by the political party in regard to the voting in the House by its Members. That such could not have been the intention would be presently shown.

153. From the respondents' side, at best it can be urged that the electors had elected the candidates of a given party as they had faith in the social, political and economic ideology of the party, which had sponsored them and by defecting, the Member would be betraying the trust of his political party and the electorate, because as a result of his defection the party would not be able to implement its policies.

154. But, it may be observed that it is not merely legislative measures that come up before the House for consideration and which require Members to give their opinion by casting their votes. The House, at times, has to consider the motion for impeaching high constitutional functionaries like President of India, Judges of the Supreme Court and High Courts, Comptroller and Auditor General of India and the Chief Election Commissioner of India, or the Motion for punishing a person, for a contempt of the House. The decision of the House to impeach or punish arrived at as a result of such motion being passed by the House with the given majority of votes, involves exercise of Judicial functions of considerable magnitude and importance. In this no social, economic or political ideology of a given party is involved. What is involved is the consideration of a pure merits of a given case of impeachment or contempt of the House. In a case like this, legitimately no whip can be and ought to be issued to its Members. Similarly, the presiding officer of the House is supposed to act in a non-partisan manner. When a Speaker or Deputy Speaker is to be elected by the Members, the political party; in my opinion should not issue any direction to its Members to vote one way or the other, if a semblance of non-partisan character of the office of Speaker and Deputy Speaker is to be maintained.

155. If the expression : "any direction" is to be construed in literal sense then the Political parties would be entitled to give direction to their Members to vote in one way the other on a motion of contempt, and impeachment as also regarding election of the Speaker and the Deputy Speaker, which in my view, was not the purpose and object of the Parliament in enacting Fifty-Second Constitution Amendment. Clause (b) of paragraph 2, in my opinion, could not be construed in isolation. It must be interpreted in the context of clause (a).

156. Whilst enacting a statute or a given provision thereof, the Legislature had a purpose or an objective in view. The courts have to divine the purpose and the intent that animated the Legislature in enacting the given statute or its given provision. This intent is, no doubt, to be gathered from within the four corners of the statute, Once that is done and the court becomes aware as to the intent of the Legislature, then it has to interpret the relevant provision of the statute in the light of the said awareness. I have already hinted at the basic purpose of enacting Fifty-Second Constitution Amendment. The said intention of the Legislature too warrants against the literal construction of the words : "any direction".

Hearings of Sections have at times been considered as key to the interpretation of the section. At times, the 'headings' to the Sections are likened a preamble to the statute.

157. There are no two opinion that headings or titles prefixed to the Sections can be referred to in construing an act of Legislature, although there are conflicting opinion as to what weight should be attached to the headings, as is apparent from the various speeches of the Law Lords in *Director of Public Prosecutions v. Schildkamp*[32],

In *Beswick v. Beswick*[33], the house of Lords used the cross-heading to limit the natural meaning of the word 'property' in Section 56(1) of the Law of Property Act, 1925.

In *Bhinka v. Charan Singh*[34] their Lordships whilst construing Section 180 of Uttar Pradesh Tenancy Act, 1939, pressed into service the heading of the section.

158. The expression "defection" occurring in the heading of paragraph 2 also points to the desirability of giving a narrow meaning to the words "any direction". The expression "defection" in the Concise Oxford Dictionary (seventh Edition) gives the following meaning :-

> "falling away from allegience to leader, party, religion, or duty; desertion, esp. to another country etc."

159. If the expression : "any direction" is to be literally construed then it would make the people's representative a wholly political party's representatives, which decidedly he is not. The Member would virtually loose his identity and would become a rubber stamp in the hands of his political party. Such interpretation of this provision would cost it, its constitutionality, for in that sense it would become destructive of democracy/parliamentary democracy, which is the basic feature of the Constitution, where giving of narrow meaning and reading down of the Provision can save it from the vice of unconstitutionality the Court should read it down particularly when it brings the provision in line with the avowed legislative intent. Bhagwati, J. (as he then was) in *Minerva Mills Limited and others v. Union of India and others*[35], at P. 1838, in order to save Article 352, Clause (5) (a) of the Constitution from being declared unconstitutional, read down the provision.

In this regard, the following observations are instructive :

> "It is true that by reason of clause (5) (a) of Article 352, the satisfaction of the President is made final and conclusive, and cannot be assailed on any ground, but as I shall presently point out, the power of judicial review is a part of the basic structure of the Constitution and hence this provision debarring judicial review would be open to attack on the ground that it is unconstitutional and void as damaging or destroying the basic structure. This attack against constitutionality can, however, be averted by reading the provision to mean - and that is how I think it must be read - that the immunity from challenge granted by it does not apply where the challenge is not that the satisfaction is improper or unjustified but that there is no satisfaction at all. In such a case, it is not the satisfaction arrived at by the President which is challenged but the existence of the satisfaction itself. Where, therefore, the satisfaction is absurd or perverse or *mala fide* or based on a wholly extraneous and irrelevant ground, it would be no satisfaction at all and it would be liable to be challenged before a Court, notwithstanding Clause (5) (a) of Article 352 ... ..."

160. When clause (b) of sub-paragraph (1) of paragraph 2 of Tenth Schedule is to be interpreted, keeping in view the above principles of interpretation and when in my view, the purpose of enacting paragraph 2 could be no other than to insure stability of the democratic system, which in the context of Cabinet/Parliamentary form of Government on the one hand means that a political party or a coalition of political parties which has been voted to power, is entitled to govern till the next election, and on the other, that opposition has a right to censure the functioning of the Government and even overthrow it by voting it out of power if it had lost the confidence of the people, then voting or abstaining from voting by a Member contrary to any direction issued by his party would by necessary implication envisage voting or abstaining from voting in regard to a motion or proposed, which if failed, as a result of lack of requisite support in the House, would result in voting the Government out of power, which consequence necessarily follows due to well established constitutional convention only when either a motion of no-confidence is passed by the House or it approves a cut-motion in budgetary grants. Former because of the implications of Articles 75(3) of the Constitution and latter because no Government can function without money and when Parliament declines to sanction money, then it amounts to an expression of lack of confidence in the Government. When so interpreted the clause (b) of sub-paragraph (1) of paragraph 2 would leave the Members free to vote according to their views in the House in regard to any other matter that comes up before it.

161. Paragraph 2(b) when thus viewed cannot be considered to be destructive of the parliamentary democracy, particularly when a Government which is truly unpopular and had lost the confidence of the people, can be voted out, without the Members incurring disqualification in terms of paragraph 2 as a result of exemption envisaged by paragraph 3. Hence, in my view, it was within the constituent power of the Parliament to enact the abovesaid amending provision.

162. Now coming to the merits of the case, it may be observed that Mr. D. D. Thakur, the learned counsel appearing for respondent No. 6 has argued that the order of the Speaker dated 8th May,

1986 (Annexure P-3) suffers from three infirmities :-

(i) That the question of disqualification of the Members, in question, i.e. the petitioners, had not been referred to him and, therefore, there was no occasion for him to pass that order in terms of paragraph 6, read with paragraph 3 of Tenth Schedule;

(ii) That the said order was void as it had been passed in violation of principles of natural justice, in that - the Leader of the original Akali Dal Legislature party or its President, Shri Surjit Singh Barnala, respondent No. 7, had not been given any opportunity of hearing before passing the said order; and

(iii) That provisions of paragraph 3 were not at all attracted, so as to save the petitioners from disqualification in terms of paragraph 2, because there had not occurred any political split in the Shiromani Akali Dal, led by respondent No. 7, whereas provisions of paragraph 3 are attracted only when political split in the party had preceded the formation of the breakaway group of the said Legislature party.

163. Before proceeding to deal with the aforesaid contention, a reference to the provision of paragraph 3 would be necessary :

"3. *Disqualification on ground of defection not to apply in case of split.* - Where a member of a House makes a claim that he and any other members of his legislature party constitute the group representing a faction which has arisen as a result of a split in his original political party and such group consists of not less than one-third of the membrs of such legislature party, -

(a) he shall not be disqualified under sub-paragraph (1) of paragraph 2 on the ground -

(i) that he has voluntarily given up his membership of original political party; or

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention; and

(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."

164. Dealing with the last ground of attack against order (Annexure P-3), first, it may be observed that the expression "where a Member of a House makes a claim that he and any other Member of Legislature party constitute the group representing a faction, which has arisen as a result of split in his original political party" occurring in paragraph 3, almost in express terms is suggestive of the fact that a split in the original political party must precede before a breakaway

group in the Legislature party can lay claim to represent the breakaway faction of the original political party. The reason for prescribing political split of a party, as a condition precedent for saving the Members belonging to the breakaway group of Legislature party from disqualification in terms of paragraph 2 was intended in some measure to keep away personal aggrandisement as the motive for the Member to resign from his party or to disobey the direction of his party, envisaged in clause (b) of paragraph 2. The parliament, in my opinion, had intended that it must be only for reasons of differences on matters of policy and ideology that a Member or group of Members should be disassociating from their party, if they were to escape disqualification in terms of paragraph 2. This, they tried to ensure by envisaging that there must have been a split in the political party and the breakaway group of the Legislature party should be owing allegiance to such breakaway faction of the original political party.

Mr. D.D. Thakur, however, canvassed that the expression 'split' envisages split to the party all along the line, i.e. from the apex forum down to the lowest forum of the party. Mr. D.D. Thakur also suggested that a split should be of a sizeable nature and that mere disassociation of breakaway group of Legislature party from their political party would not constitute split in the party.

165. The expression 'split' in the original political party is not amenable to a strait jacket definition and it was perhaps for that reason that the Parliament had refrained from defining the said expression. In other words the Parliament had intended a flexible approach whilst construing the said expression. The reason is not far to seek. No standard or model constitution is prescribed for the political parties, either by any statute or by any convention. - The political parties in India are not even required to be registered. For the purpose of Tehsil-Schedule, the Parliament had not even intended that the political party should have been a recognized National or State Level party in terms of the Election Symbols (Reservation and Allotment) Order, 1968, issued, - vide Notification No. S.O. 2959, dated the 31st August, 1968, in exercise of the powers conferred by Article 324 of the Constitution, read with rule 5 and rule 10 of the Conduct of Elections Rule, 1961.

166. Without being exhaustive, in my opinion, the minimum requirement of 'split' in the political party would be public disassociation from the political party and declaration of intention publicly to form a breakaway party or an altogether a new party; that such disassociation from the original political party be on account of ideological differences with the party, which are expressed openly and publicly and the same are taken notice of, at least by the Press. However, the strength of such breakaway faction of the political party and the standing in the original party of such Members for the purpose of construing the expression 'political-split' would not be material. In other words numerical strength of the breakaway faction may be virtually negligible.

167. Mr. Shanti Bhushan next argued that the use of the expression 'claim in paragraph 3' - envisages that one-third or more Members of the original Legislature party had simply to make a claim that they constitute a group, which represent a faction which had arisen as a result of a split in the original political party and the Speaker had merely to satisfy himself as to the strength of such a group and no more, while deciding the question as to whether persons making a claim are saved from incurring the disqualification envisaged in paragraph 2.

168. I am afraid this contention cannot be accepted at its face value. If what Mr. Shanti Bhushan has suggested to be the true import of the expression : 'claim' used in paragraph 3, then the Speaker should accept the claim regarding the strength of the group, as claimed by the Member without demur. This, even Mr. Shanti Bhushan does not suggest and he concedes that the Speaker would be entitled to satisfy himself as to the correctness of the claim in regard to the strength of the group whether by counting heads or otherwise.

In terms of paragraph 3 the Member in order to escape disqualification in terms of paragraph 2 makes two claims :-

> (i) That as a result of 'political split' in his original party a faction has arisen and breakaway group represents that faction :

and

> (ii) That the strength of the breakaway group is one-third of the original Legislature party.

If the Speaker has to satisfy himself regarding the strength of the breakaway Legislature group it has also to satisfy himself whether they represent a faction that had arisen, as a result of the 'split' in the political party.

169. The next question regarding the validity of order of the Speaker (Annexure P-3) that falls for consideration is as to whether he could be considered to have been legally seized of the matter in terms of paragraph 6(1) of the Tenth Schedule. In other words whether an occasion had arisen for him to go into the question of disqualification of the petitioner ? It has been contended by Mr. D. D. Thakur, the learned counsel for respondent No. 6 that the expression : "the question shall be referred for the decision of the Chairman or as the case may be, the Speaker of such House", occurring in paragraph 6 of Tenth Schedule, expressly envisages when read with the portion that precedes it; that first the question whether a Member of a House has become subject to disqualification, must arise for consideration and thereafter this question has to be referred for the decision of the Chairman or the Speaker, as the case may be ?"

170. The language of paragraph 6 does not provide a clue as to person or authority, which is to refer such a question to the Speaker or the Chairman, as the case may be. The language of paragraph 6 is almost in *pari materia* with the language of clause (1) of Article 192 of the Constitution of India and their Lordships in Brundaban Nayak's case (supra) had an occasion to consider as to when such a question arises and who can refer it to the Governor for his decision. The facts of that case were that the appellant-Brundaban Nayak was elected as a Member of the Legislative Assembly of Orissa in 1961, and was appointed as one of the Ministers or the Council of Ministers in the said State. On August 18, 1964, one of the respondents, namely, P. Biswal applied to the Governor of Orissa alleging that the appellant Braundabad Nayak had incurred a disqualification subsequent to his election under Article 191 (1) (e) of the Constitution, read with Section 7 of the Representation of the People Act, 1951. On 10th September, 1964, the Chief Secretary to the Government of Orissa forwarded the said complaint to the Election Commission of India under the instructions of the Governor. In this communication, the Chief Secretary stated that a question had arisen under Article 191(1) of the Constitution whether the Member in question, had been subject to the disqualification alleged by

respondent No. 2 P. Biswal, and so he requested the Election Commission of India in the name of the Governor to make such enquiries as it thought fit and give its opinion for communication to the Governor to enable him to give decision on the question raised. On 17th November, 1964, the respondent - Election Commission of India served a notice on Brundaban Nayak, who in response to the said notice appeared before him through his counsel. He challenged the competency of the Election Commission of India to inquire into the matter. The counsel for the appellant sought an adjournment without submitting to the jurisdiction of the Election Commission of India. The Election Commission of India declined adjournment and heard the counsel for the respondent No. 2 and reserved its order and noted that its opinion would be communicated to the Governor as early as possible. It was at that stage that Brundaban Nayak filed a petition under Article 226 of the Constitution of India in the High Court, praying that the inquiry which the Election Commission of India was holding should be quashed on the ground that it was incompetent and without jurisdiction. The writ petition was summarily dismissed by the High Court. The matter reached ultimately the Supreme Court.

171. The question raised on behalf of Brundaban Nayak by his counsel, Mr. Setalvad and which fell for consideration by the Supreme Court was that no question could be said to have arisen as to whether the appellant Brundaban Nayak became subject to any of the disqualification mentioned in clause (1) of Article 191 of the Constitution of India, because such a question could be raised only on the floor of the Legislative Assembly and could be raised by the Member of the Assembly and not by any ordinary citizen or voter in the form of a complaint to the Governor. It was urged by Mr. Setalvad that just as the question contemplated by Article 191, clause (3) could be raised only on the floor of the House, so could the question about his subsequent disqualification as a Member of Assembly be raised on the floor of the House and nowhere else. Mr. Setalvad had also argued that the expression that if any question arises, it shall be referred for the decision of the Governor suggests that there should be some referring authority, which would make a reference of the question to the Governor for his decision. It was argued by Mr. Setalvad that such a referring authority by necessary implication was the Speaker of the Legislative Assembly.

172. Repelling the contention advanced by Mr. Setalvad, their Lordships observed as follows :-

Para 12 :

> "We are not impressed by these arguments. It is significant that the first clause of Article 192 (1) does Dot permit of any limitations such as Mr. Setalvad suggests. What the said clause requires is that a question should arise; how it arises by whom it is raised, in what circumstances it is raised, are not relevant for the purpose of the application of this clause. All that is relevant is that a question of the type mentioned by the clause should arise; and so, the limitation which Mr. Setalvad seeks to introduce in the construction of the first part of Article 192 (1) is plainly inconsistent with the words used in the said clause.

Para 13 :

> "Then as to the argument based on the words "the question shall be referred for the decision of the Governor", these words do not import the assumption that any other authority has to receive the complaint and after a *prime facie* and initial investigation

about the complaint, send it on or refer it to the Governor for his decision.

* * * *

* * * *

If the intention was that the question must be raised first in the Legislative Assembly and after a *prima facie* examination by the Speaker it should be referred by him to the Governor, Article 192(1) would have been worded in an entirely different manner. We do not think there is any justification for reading such serious limitation in Article 192 (1) merely by implication.

* * * *

* * * *

*** The object of Article 192 is plain. No person who has incurred any of the disqualifications specified by Article 191 (1), is entitled to continue to be a member of the Legislative Assembly of a State, and since the obligation to vacate his seat as a result of his subsequent disqualification has been imposed by the Constitution itself by Article 190 (3) (a), there should be no difficulty in holding *that any citizen is entitled to make a complaint to the Governor alleging that any member of the Legislative Assembly has incurred one of the disqualifications mentioned in Article 191 (1) and should, therefore, vacate his seat.* The whole object of democratic elections is to constitute legislative chambers composed of members who are entitled to that status, and if any member forfeits that status by reason of a subsequent disqualification, it is in the interests of the constituency which such a member represents that the matter should be brought to the notice of the Governor and decided by him in accordance with the provisions of Article 192 (2). Therefore, we must reject Mr. Setalvad's argument that a question has not arisen in the present proceedings as required by Article 192(1)."

173. From the above quoted observations of their Lordships, it is clear that the question of disqualification could be raised by anybody before the Speaker.

174. The other question that falls for consideration is as to whether an occasion had arisen for the petitioners to approach the Speaker and seek his decision in regard to the fact as to whether they were or were not saved from incurring the disqualification envisaged by paragraph 2 ? In this regard the following provisions of paragraph 3(b) and paragraph 8(a) are decisive of the interpretive approach :

"3(b) from the time of such split, such faction shall be deemed to be the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2 and to be his original political party for the purposes of this paragraph."

"8(a) the maintenance of registers or other records as to the political parties, if any, to which different members of the House belong;"

175. A perusal of provision of clause (b) of paragraph 3 would show that from the time of split,

breakaway faction shall be deemed to be the political party to which the breakaway group of the Legislature party would belong for the purposes of sub-paragraph (1) of paragraph 2 and it is to be his original political party for the purposes of paragraph 3. When such is the case, then the moment the original party splits then such Member of the Legislature party of the original party that owe allegiance to the breakaway faction are entitled to bring to the notice of the Speaker the factum of the split of the original party, as also the factum of their owing allegiance to breakaway faction of the original party in order to have the breakaway faction of the original political party entered into the Register envisaged to be maintained by the Speaker, in terms of clause (a) of paragraph 8, so that if any Member thereafter was to resign from the breakaway faction or was to disregard the directions issued by such breakaway faction of the original political party, a question could be raised regarding his disqualification to be a Member of the House in terms of paragraph 2 of the Tenth Schedule. If the Members of the breakaway faction of the original political party or the group of Members owing allegiance to such breakaway faction of the original political party were to remain silent and the factum of split of the original political party and the factum of some of the Members of the Legislature party owing allegiance to such break away faction were not brought to the notice of the Speaker, then the situation would have remained fluid and uncertain and the Members would not know as to whether they were to obey the directions issued by the original political party or the one issued by the breakaway faction of the original political party and would they be incurring disqualification in terms of clause (b) of paragraph 2, while disobeying the directions issued by the original political party or the one issued by the breakaway faction of the political party.

176. In view of the above, I am clearly of the view that the petitioners were well within their right to apply to the Speaker to recognize the factum of split as also the factum of the petitioners owing allegiance to such a breakaway faction of the political party and also decide as to whether such members although having incurred disqualification in terms of paragraph 2, were or were rot saved from such disqualification in terms of paragraph 3 of the Tenth Schedule.

177. The operative portion of their (petitioners) application (Annexure P-1) is in the following words :-

> "We, the undersigned M.L.As who were elected on the Shiromani Akali Dal (L) ticket to the Punjab Vidhan Sabha, herewith give notice that as we have fundamental differences with Sardar Surjit Singh Barnala, the present leader of the Legislature party, on the issue of police entry into the holy prencincts of Sri Harmandir Sahib, we have decided to form a separate Legislative group of the Shiromani Akali Dal and would be grateful if you would recognize us and allocate us separate seats in the Punjab Vidhan Sabha. This is in consequence of a split in the political party. * * * *
>
> * * * *

Perusal of the contents of Annexures P-1 would show that the petitioners had brought to the notice of the speaker both the facts i.e. political split in the party and the petitioners having

formed a separate group in the Legislative party which owed allegience impliedly to the breakaway faction of the original political party. The Speaker gave his decision on 8th May, 1986 (Annexure P-3) on the said application of the petitioners, which is in the following terms :-

> "On 7th May, 1986, an application signed by 27-MLAs, elected to the Punjab Vidhan Sabha on the Shiromani Akali Dal (L) Ticket, was presented to me wherein they had stated that as a result of political split in their party (Shiromani Akali Dal-L) due to fundamental differences with S. Surjit Singh Barnala, their present leader, they have decided to form a separate group in the Punjab Vidhan Sabha.

Consequent upon the receipt of this notice, I asked them to present all the 27 members in my office on 8th May, 1986, at 9.00 A.M. where I would like to ascertain individually whether they had made this request under any duress or of their own free will.

Today, the 8th May, 1986, all the signatories to the application came to my chamber at 9.00 A.M. and I gave an opportunity of being heard to each of the 27 members individually to ascertain whether they had made this request under any duress or of their own free will. This process was duly conducted and a declaration to the effect that the request for formation of this separate group was made of their own free will, was signed individually in the presence of myself, the Secretary, Punjab Vidhan Sabha. Mr. G.L. Kaul and Mr. Pritam Singh, Deputy Secretaries of the Sabha Secretariat. The last mentioned three have individually witnessed the above-mentioned declaration of each of the 27 individual members.

> "Therefore, under the provision contained in paragraph 3 of the Tenth Schedule of the Constitution of India, they do not incur any disqualification as it is a case of split in the party and they constitute a ground of more than 1/3rd members of the original Shiromani Akali Dal Legislature party whose effective strength (excluding the Speaker who is neutral) was 72.
>
> Further, I gave due recognition to the new group of 27 members as a separate political party and order that they be given separate seats in the Assembly."

178. A perusal of the aforesaid order would show that the Speaker felt satisfied that there had been a split in the original political party; that the petitioners constituted a group in the Legislature party and the strength of the group was more than one-third of the original Shiromani Akali Dal Legislature party and consequently he recognized the new group as belonging to a separate political party and ordered that they be given separate seats in the Assembly.

179. The next challenge to the order (Annexure P-3) is that this order is void *ab initio* as it had been passed by the Speaker in violation of the principles of natural justice, in that the Speaker neither issued notice to the original Shiromani Akali Dal party, nor to its President, S. Surjit Singh Barnala, respondent No. 7, or gave any opportunity of hearing to him.

180. Mr. D.D. Thakur cited decisions both of Indian and English courts in order to substantiate his contention that the order passed in violation of principles of natural justice is a mere nullity

and, therefore, the Speaker respondent No. 6 was well within his right to consider the question as to whether the petitioners had become subject to the disqualification in terms of paragraph 2, as alleged in the application submitted to him by respondent No. 7 and consequently, it was legitimate for him to issue the impugned show cause notice to the petitioners. It was also submitted that until and unless the Speaker had decided the question of the disqualification of the petitioners, the application of S. Amarinder Singh (Annexure P-7) to be recognized the Leader of the breakaway group was a little premature and, therefore, the application was rightly rejected by the Speaker, - vide order (Annexure P-8).

181. No authority need be cited to establish the proposition that an order passed in violation of the principles of natural justice is *non est qua* the party which had not been afforded an opportunity of hearing, if that party had a right to be heard before the passing of the given order. Hence, I do not wish to burden this judgment by going into the facts and ratio of the said decisions.

182. So the primary question that in this regard falls for examination is as to whether Mr. Surjit Singh Barnala, respondent No. 7 as the leader of the Akali Dal Legislature or the Akali Dal Party, which he headed were necessary party to the proceedings initiated by the petitioner-applicants, - vide their application (Annexure P-1).

183. In my opinion, Mr. Shanti Bhushan, the learned counsel for the petitioners, is right when he submits that the principles of natural justice requires a party to be given an opportunity only in a matter where the recognized legal rights of such party are going to be affected. The defection from a political party may be the reason for the imposition of a penalty of disqualification on the defecting Member in terms of the provisions of the Tenth-Schedule, but there is nothing in the Tenth-Schedule to show that the political party is given any kind of legal rights in the matter. The question of disqualification is a matter between the State/Nation as such and the Member concerned, and the given provisions are intended merely to penalize a Member for an act which is regarded as improper. It is only the right of a Nation or a State as such to have the Member disqualified and not of the political party from which he might have defected. The Nation or the State is represented by the Speaker and it is he who exercises the authority of the State to enforce the penalty. The Speaker accordingly has to decide the question only after hearing the Member concerned. No other person or party can be treated as a necessary party to any such proceedings. It would be for the Speaker to determine in each case to collect the material from whichever source he might think it likely to be available from. Any other person would stand in the position only that of a witness and not necessarily that of a party.

In view of the above, it was not at all legally necessary to bear respondent No. 7 of any representative of the Shiromani Akali Dal (Longowal) party and, therefore, the order (Annexure P-3) does not suffer from any infirmity of the kind.

184. In the presence of this order (Annexure P-3) the action of respondent No. 6, the present Speaker, in issuing the impugned show cause notice was clearly untenable and was without jurisdiction in the face of order (Annexure P-3) the complaint by respondent No. 7 in his application (Annexure P-5) to the effect that the petitioners had not obeyed the directions issued by him to vote in a given manner in regard to the elections of the Speaker or the Deputy Speaker, held on 2nd June, 1986, was not required to be taken notice of by respondent No. 6 muchless to

be persuaded to issue the impugned show cause notice to the petitioners. For the same reason, the action of the Speaker, in my opinion, in rejecting the application of Shri Amarinder Singh (Annexure P-7) to be recognized the Leader of the breakaway group in the Punjab Vidhan Sabha was illegal, in that in view of the order dated 8th May, 1986, of his predecessor (Annexure P-3) the respondent No. 6 had no option, but to recognize Shri Amarinder Singh, as the Leader of the breakaway group, comprised of the petitioners. Because at least from 8th May, 1986 splinter faction of Shiromani Akali Dal became separate political party and the Member elected as Leader by the Members of the breakaway group of Akali Dal Legislature party that owed allegiance to it became the Leader of the Akali Dal breakaway group.

185. Before closing the judgment, I may summarize the conclusion that I have reached :

(a) That paragraph 2(b) after being read down envisages incurring of disqualification by a Member only when he votes or abstains from voting contrary to the direction of the political party on a motion of no confidence or a cut-motion on budgetary grant; that when so read, paragraph 2 is not destructive of Parliamentary democracy, which is a basic feature of the Constitution and forms part of the basic structure of the Constitution of India, nor is it destructive of two other alleged basic features of the constitution namely -

(i) The Federal structure of the Constitution;

(ii) separation of powers between three wings of the state, namely - Executive, Legislature and Judiciary.

(b) Paragraph 6 does not in any manner affect the powers of the High Court and the Supreme Court under Article 226 and Article 136, respectively of the Constitution of India, and, therefore, this did not call for ratification in terms of Proviso to Clause (2) of Article 368 of the Constitution of India;

(c) Paragraph 7 ousted the jurisdiction of the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India in regard to all matters connected with the disqualification of a Member of the House under the Tenth Schedule, which expression comprehended within its fold the decision of the Speaker or, as the case may be, of the Chairman of the House rendered under sub-paragraph (1) of paragraph 6. Since Article 226 and Article 136 of the Constitution of India are 'enterenched provisions' and an amendment of these Articles to be constitutionally valid, has to be ratified in terms of the Proviso to Clause (2) of Article 368 of the Constitution and, such ratification admittedly having not been secured before the President gave assent to the Bill, the provisions of paragraph 7 are constitutionally invalid and, therefore, have to be struck down as constitutionally invalid and still-born provision;

(d) That excepting Paragraph 7 of Tenth Schedule, the rest of the Act, in question, is constitutionally valid.

(e) That the order of the Speaker dated the 8th of May, 1986 (Annexure P-3) is legal and

valid.

(f) That the Speaker, respondent No. 6, acted beyond his jurisdiction in entertaining the application of respondent No. 7 (Annexure P-5) and in issuing the impugned show cause notice (Annexure P-6).

(g) That the Speaker, respondent No. 6, had no option but to accept the application (Annexure P-7) of Shri Amarinder Singh and recognize him as Leader of the breakaway group of the Akali Dal party in view of the order of his predecessor dated the 28th of May, 1986 (Annexure P-3) and that his order dated the 4th of July, 1986 (Annexure P-8), rejecting the application of Shri Amarinder Singh is illegal.

186. In the result, excepting paragraph 7 of Tenth Schedule, rest of the Constitution (Fifty-Second Amendment) Act, 1985, is held to be constitutionally valid. Paragraph 7 of Tenth-Schedule of the Constitution (Fifty-Second Amendment) Act, 1985, is struck down as constitutionally invalid and still-born provision. The show cause notice dated 13th June, 1986 (Annexure P-6), issued by the Speaker, Shri Surjit Singh Minhas, respondent No. 6 and order dated 4th July, 1986 (Annexure P-8) of Shri Surjit Singh Minhas, Speaker, respondent No. 6 are quashed as being illegal, whilst the order dated 8th May, 1986 (Annexure P-3) of the respondent No. 6 is held to be legal and valid. The Writ Petitions are disposed of accordingly. No costs.

H.N. Seth, C.J. and R.N. Mittal, J. :-

187. We have, carefully gone through the judgments of Tewatia, J. and Goyal, J.

188. Both the learned Judges have held that paragraph 6 of the Tenth Schedule of the Constitution of India does not affect the powers of the High Court and Supreme Court under Article 226 and Article 136 respectively of the Constitution of India and, therefore, the paragraph did not require ratification under Article 368; that paragraph 7 ousts the jurisdiction of, the High Court under Article 226 and that of the Supreme Court under Article 136 of the Constitution of India and, therefore, it required ratification; and that, paragraph 7 is not constitutionally valid, whereas the other provisions of the Amendment Act are valid.

189. We respectfully agree with the view expressed by them.

190. So far as quashing of the order, Annexure P-8, is concerned, both the learned Judges have held that the same deserves to be quashed, but for different reasons. We agree that the order, Annexure P-8, deserves to be set aside for the reasons given by Brother Goyal.

191. However, there is difference of opinion between the learned Judges on the following points :

(a) Whether paragraph 2(b) should be read down in order to save it from being unconstitutional ?

(b) Whether Annexure P-3, dated May 8, 1986 is an order within the purview of paragraph 6, if so whether it is legal and valid ? and

(c) Whether the Speaker acted beyond jurisdiction in entertaining the application of Respondent (Annexure P-5) and issuing the impugned Show Cause Notice, Annexure P-6 ?

192. On the aforementioned points as also generally we respectfully agree with the judgment rendered by Goyal, J.

J.V. Gupta, J. :-

193. I have perused the judgments prepared by Brothers Tewatia and Goyal. I have also noted the opinion expressed by Chief Justice and Brother R. N. Mittal. I entirely agree with the views expressed by Brother Tewatia.

Order of the Court :

194. We hold that except for paragraph 7 of the Tenth Schedule, rest of the Constitution (Fifty-second Amendment Act, 1985) is constitutionally valid; paragraph 7 of the Tenth Schedule of the Constitution (Fifty-second Amendment Act, 1985) is struck down as constitutionally invalid and still-born; the order of the Speaker, dated 4th of July, 1986 (Annexure P-8) is quashed; remaining reliefs claimed in the petition are declined. The writ petitions are disposed of accordingly. Parties are directed to bear their own costs.

Cases Referred.

1AIR 1965 SC 1892
2AIR 1971 SC 1093
3AIR 1962 SC 1621
4AIR 1947 PC 60
5AIR 1951 SC 458
6AIR 1973 SC 1401
7AIR 1975 SC 2299
8(1910) A.C. 87
9AIR 1996 SC 111
10AIR 1980 SC 1789
111985-1 (89) PLR 222
12AIR 1973 SC 1401
13AIR 1965, S.C. 1892
14AIR 1971 SC 1093
15AIR 1954 SC 520
161987(1) S.L.R. 182, CWP 12437 of 1985, decided on 9th December, 1986
17(1957)II All England Reporter 796
181969 (2) A.C. 147
19 AIR 1950 SC 188
20AIR 1977 SC 2155
21AIR 1956 SC 231
22AIR 1961 SC 1669
23AIR 1963 SC 677
24AIR 1963 SC 874
25AIR 1965 SC 1595
26AIR 1951 SC 458

27AIR 9975 SC 2299
28(1910) AC. 87
29AIR 1986 SC 111
30AIR 1965 SC 1839
31AIR 1955 SC 830
32(1969) 3 All England Reporter 1640 (HL)
33 (1967) 2 All England Reporter 1197 (HL)
34AIR 1959 SC 960
35AIR 1980 SC 1789