POLITICAL PARTIES *Vis-A-Vis* JUDICIAL REVIEW: CRISIS IN COALITION OF GOVERNMENT

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I. Introduction

The nitty-gritty of any predicament in relation to political parties emanates from their uncertain legal status under the Constitution of India. The pertinent question is whether they are free private association similar to NGO's or clubs that use the Constitution as their defence against the unbridled power of the State or whether they are State actor subject to constitutional restrictions enshrined under the Constitution.

There are different dimensions to political parties that have different legal properties. According to one of the initial work of political science[2] seldom cited by the judges or lawyers[3] there are three components of any Political party: the party-in-the government, professional political workers, and the party-in-the-electorate.[4] Scholars who have been writing in this area in USA postulate the word "party" as if it had a steady and dependable meaning across a range of legal turf.[5] The concept of political party has changed from age to age. While Burke, for instance defined it as 'a body of men, united for the purpose of promoting by their joint endeavours the public interest, upon some principle on which they are all agreed, Laski viewed it as an organisation which seeks 'to determine the economic constitution of the State'.[6] Wherever the political parties have emerged they appear to perform some common function in wide variety of political system at various stages of social, political and economic development. Whether in

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1 AAG, Government of Haryana and Advocate on Record, Supreme Court of India.

2 V.O. Key, Jr., "*Parties, & Pressure Groups*", 163-65, Thomas Y. Crowell Company, 5th ed. 1964.

3 Daniel Hays Lowenstein, "*Associational Rights of Major Political Parties: A Skeptical Inquiry*", 71 Tex. L. Rev. 1741, 1757 (1993); Richard Hasen, *Entrenching the Duopoly*: *Entrenching the Duopoly: Why the Supreme Court Should Not Allow the States to Protect the Democrats and Republicans from Political Competition*, 1997 Sup. Ct. Rev. 331-371, 350 (1997).

4 Nathaniel Persily & Bruce E. Cain, "*The Legal Status of Political Parties: A Reassessment of Competing Paradigms*", 100 (3) Columbia Law Review, *779 (2000).*

5 Elrod v. Burns, 427 U.S. 347, 361 (1976). *See also* Eu v. San Francisco County Democratic Central Committee, 489 U.S. 214, 230 (1989).

6 B B Misra, The Indian Political Parties. An Historical Analysis of Political Behaviour Upto 1947, 1 (Oxford University Press 1976).

a free society or under a totalitarian regime, the organisation called the party is expected to organise public opinion and communicate demands to the centre of governmental power and decision.[7]

It is, in this way, to be examined in the following heads of the present study that whether political parties come within the ambit of 'State' under Article 12 of the Constitution of India or in any way can be subject to Judicial Review?

The research on this point becomes more important when Political parties functions in the coalition of Government. The system of coalition government means a system of governance by a group of political parties when several political parties collaborate to form a government an exercise the political power on the basis of common agreed agenda. It is an arrangement between two or more parties for sharing. It is an alliance of distinct parties for the purpose of forming the government.[8] Since there is no law in the Country dealing with the aspects of Coalition and its consequences, thus, political parties' *propriovigore* deemed to have absolute authority and power to withdraw its support from the other political party at any point of time without assigning any valid reasons. The instances of it have been seen recently when the support of JDU was withdrawn from RJD in Bihar in the month of June-July, 2017. Another example of it can be emanated from the incident when AAM Admi party resigned in 2014. Thus, the objective of present study, is to have the better understanding of the legal status of political parties under the Constitution of India especially in relation to filing of the writ petition against them before the Hon'ble Supreme Court and High Court against their whimsical decision of withdrawing support from the another political party. Therefore this study confining itself to the doctrinal research makes an attempt to find out that whether any political party for any discrete period, if violates fundamental rights of the people or basic structure of the Indian Constitution, can fall under the ambit of "State" enumerated under Article 12 of the Indian Constitution or if not, then can in any way be subject to Judicial Review.

II. Political Parties and Obfuscation in their Behaviour

Any case may come within the limit of Judicial Review on the basis of two ways. First where there is a conflict over the statutory interpretation. Second, where an individual challenges a law or any governmental actions

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[7] Joesh Lapalombara & Myron Weiner, "*The origin and Development of political parties, in Political Parties and Political Development*" 1, (Princeton University Press 1996).

[8] Rajinder Singh Chauhan et. Al., "*Coalition Government in India*", 8 (Deep & Deep Publication Pvt Ltd., 2011).

as violating the provisions enshrined under the Constitution.[9] However, when Judiciary deals with the cases of Political Parties, the obfuscations are bound to arise. The reason behind the said complication and obfuscations is that in one case the Political Parties behave as "State actor" and violate the rights of the people. In other case they themselves become aggrieved under the aegis that they are merely a free association of individuals enjoying the rights under Article 19 of the Constitution of India and their rights cannot be violated by the State.

Thinking pragmatically, the "State", in today's context, can in no stretch of imagination be considered to be free from political party influence. Intrinsically, State is always controlled by the one of the political parties. In more accurate terms, it can be stated that at one point of time State is governed and controlled by the elected official of one dominant political party. It would not be off beam to state that giving the State absolute authority to frame rules for party regulation may in many ways amount to giving the power to elected official of one dominant political party to frames rules for other political parties as well.

However, contrary to aforementioned point, the protagonist of the Political parties argue that they are not a State actor but merely species of organized and private interest groups who must be given the absolute freedom and right of association, right to privacy and protection from discrimination by the State etc.[10] A well-known definition of political parties comes from the American political scientist Antony Downs, who wrote: "A political party is a team of men seeking to control the governing apparatus by gaining office in a duly constituted election".[11] Since, in any democracy, behaviour of Political Parties still confuses not only the populist perception of common people but also the perception of many in the legal sodality. This confusion about their behaviour makes it difficult to bring them within the ambit of judicial review. However, behaviour of any political party differs from Country to country so the scope of their coming under the ambit of

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[9] Morse v. Republican Party, 517 U.S. 186 (1996) (Section 5 of the Voting Rights Act of 1965 was interpreted to apply to party primaries).

[10] Colorado Republican Federal Campaign Comm. V. Federal Election Comm., 116 S. Ct. 2309, 2316 (1996) ("The independent expression of a political party's views is 'core' First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees"); Rosario v. Rockefeller, 410 U.S. 752 (1973) (Powell, J., dissenting) (Self expression through the public ballot equally with one's peers is the essence of a democratic society.). *See also,* Nathaniel Persily & Bruce E. Cain, *The Legal Status of Political Parties: A Reassessment of Competing Paradigms,* 100 (3) Columbia Law Review, *779 (2000).*

[11] Anthony Downs, *"An Economic Theory of Democracy"*, 25 (New York: Harper & Brothers, 1957).

judicial review. Any association or body to be amenable to the Writ Jurisdiction of any Courts in India has to be "State" under Article 12 of the Constitution of India.

The question of political parties coming under the ambit of State and amenable to writ jurisdiction of the High Court under Article 226 or writ jurisdiction of the Supreme Court under Article 32 of the Constitution of India or any other provisions of the Constitution, first time arose in the case of *S. Subramaniam Balaji vs Govt. of T.Nadu & Ors.*[12] However, the Hon'ble Supreme Court did not answer the said question and left open for the academic purpose in the following words:

> ***"****Admittedly, the respondents never raised any objection relating to the jurisdiction in the High Court or even in the pleadings before this Court. It is only in the oral submissions that this issue has been raised."*
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> *"In the matters relating to pecuniary jurisdiction and territorial jurisdiction, the objection as to jurisdiction has to be taken at the earliest possible opportunity. But, this case relates to the jurisdiction over the subject matter. This is totally distinct and stands on a different footing. As such, the question of subject matter jurisdiction can be raised even in the appeal stage. However, as this petition is fit for dismissal de hors the jurisdiction issue, the jurisdiction issue is left open."*

Since, the said judgement decided by the Hon'ble Supreme Court left the said vital question open, it encourages the author to deal with the same in present study. However, before going into depth of the present study, it is inevitable to deal with the scope and extension of 'Definition of State under Article 12 of the Constitution of India' and 'Judicial Review'.

III. Scope of the 'Definition of State' and 'Judicial Review'

Article 12 of the Indian Constitution provides, viz.:

> *"Definition in this part, unless the context otherwise requires, the State includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India."*[13]

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[12] S. Subramaniam Balaji vs Govt. of Tamil Nadu & Ors (2013) 9 SCC 659.

[13] India Const. Art.12.

As per the said definition of “State” political parties, if possible, can only be included under the term “Other Authorities” provided under Article 12. The process of plausible judicial interpretation in India has expanded the scope of the term "other authorities" in its various landmark judgments. At this juncture, in order to have better understanding of “other authorities”, it is essential to trace out the genesis and scope of Article 12 in the Indian Constitution. Then Article 12 was introduced in Draft Constitution as Article 7. Dr. Ambedkar, according to his bailiwick, set forth the reasons behind including Article 12 then Article 7 in the part of fundamental rights, he stated the same in the following terms:

> *"The object of the fundamental rights is twofold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority I shall presently explain what the word 'authority' means upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the fundamental rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws. If that proposition is accepted and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as 'the State', as we have done in Article 7; or, to keep on repeating every time, 'the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority'. It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words."*[14]

In later stage the scope of “other authorities” under Article 12 was expanded by the judicial pronouncements. As per the present observation of

[14] CAD, 1948 (Vol. VII) 610.

the Court, a writ not only lies against a statutory authority, it will also be maintainable against any person and a body discharging public function who is performing duties under a statute. A body discharging public functions and exercising monopoly power would also be an authority and, thus, writ may also lie against it.[15]

In the case of *Zee Telefilms Ltd. & Anr vs Union of India & Ors*,[16] Hon'ble Supreme Court laid down certain criteria to check that when anyone or any association falls under the ambit of "State". Criteria are as follows:

i) When the body acts as a public authority and has a public duty to perform;

ii) When it is bound to protect human rights;

iii) When it regulates a profession or vocation of a citizen which is otherwise a fundamental right under a statute or its own rule;

iv) When it regulates the right of a citizen contained in Article 19(1)(a) of the Constitution of India available to the general public and viewers of the game of cricket in particular.

v) When it exercises a de facto or a de jure monopoly;

vi) When the State out-sources its legislative power in its favour;

vii) When it has a positive obligation of public nature.[17]

In light of the said criteria, the inquiry on the functions of the political parties has to be embarked, in order to find out their status as "State" under Article 12 of the Constitution of India**.**

However even on the assumption, that if political parties do not fall within the category of "State" under Article 12, then whether they irrespective of being "State" can be subject to judicial review and whether Court has any authority to entertain a petition against them if Political Parties violate rights of the people. These questions are also required to be answered in order to analyse the amenability of Political Parties to the writ jurisdiction of the Indian Courts. Therefore, it makes desiderata on the party of the author to analyse the scope of judicial review when a body or person does not come within the ambit of State under Article 12 of the Constitution of India.

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[15] Parochial Church Council of the Parish of Aston Cantlow Vs. Wallbank [(2003) UKHL 37, para 52; Hampshire County Council Vs. Graham Beer t/a Hammer Trout Farm [2003] EWCA Civ 1056.

[16] Zee Telefilms Ltd. & Anr vs Union of India & Ors, (2005) 4 SCC 649.

[17] *Id.*

Judicial Review forms basic structure of the Constitution.[18] It is inalienable. Public law remedy by way of judicial review is available both under Articles 32 and 226 of the Constitution. They do not operate in different fields. Article 226 operates only on a broader horizon. The courts exercising the power of judicial review both under Articles 226, 32 and 136 of the Constitution of India act as a "sentinel on the qui vive."[19]

Judicial Review castes a long shadow and even regulating bodies that do not exercise statutory functions may be subject to it.[20] The general rule provides that a writ petition cannot be issued against a private party. However, there are certain exceptions which have been laid down through the judicial precedents, vis.:

i) Where the institution is governed by a statute which imposes legal duties upon it;

ii) Where the institution is 'State' within the meaning of Article 12.

iii) Where even though the institution is not 'State' within the purview of Article 12, it performs some public function.[21]

Further, it has been held and has become the well accepted view in the legal terrain that public law remedy would be available when determination of a dispute involving public law character is necessary.[22] Therefore, it can be stated that even if any person or body does not fall under the ambit of State, then also it can be amenable to the Writ Jurisdiction of Court depending upon its performing the public functions and the same has to be seen in relation to political parties in India.

IV. Functions of Political Party in Form of Party Whip

The office of the Whip is no where provided in the Constitution of India or anywhere in the Rules of Procedure of the House. In fact, until the Constitution (Fifty-Second Amendment) Act, 1985 which is also known as Anti Defection law came in existence. The political parties also found no such recognition. It is with the passing of the said amendment in

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[18] State of Punjab v. Dalbir Singh, AIR 2012 SC 1040.

[19] Padma Vs. Hiralal Motilal Desarda and Others (2002) 7 SCC 564 at 577.

[20] Bradley & Ewing, Constitutional and Administrative Law, pg 303, Trans-Atlantic Publications, 13th ed. 2002.

[21] Zee Telefilms Ltd. & Anr vs Union of India & Ors, (2005) 4 SCC 649.

[22] Assembrook Exports Ltd. & Anr. v. Export Credit Guarantee Corpn. of India Ltd. & Ors., AIR 1998 Cal 1. See also, ABL International Ltd. & Anr. Vs. Export Credit Guarantee Corporation of India Limited & Ors., JT 2003 (10) SC 300; State of U.P. and Another vs. Johri Mal, (2004) 4 SCC 714 and Tata Cellular vs. Union of India AIR 1996 SC 1 Paras 101 & 102

Constitution, the "Whip" has attracted inevitable role in our parliamentary form of Democracy.[23]

Since, "party whip" may play a great role in bringing the political parties under the ambit of State, thus it is requisite to analyse the same in bit detail. In India, the 52nd amendment to the Constitution added the Tenth Schedule in 1985, commonly known as the anti-defection law which laid down the process by which legislators may be disqualified on grounds of defection. Paragraph 2 (1) (b) of the tenth schedule lays down the ground of anti-defection as- "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." Such directions issued by the political party or the authorised person or authority in the party have been construed as the whip of the party, person or authority.

The concept of the whip was inherited from colonial British rule. Every major political party appoints a whip who is responsible for the party's discipline and behaviour on the floor of the house. Usually, he or she directs the party members to stick to the party's stand on certain issues and directs them to vote as per the direction of senior party members. However, there are some cases such as Indian presidential elections where whips cannot direct a member of parliament or member of legislative assembly on whom to vote. In practice, the whip is "an official appointed to maintain discipline among, secure attendance of, and give necessary information to, members of his party. Party whips are persons who are expected to be a channel of communication between the political party and the members of the party in the legislature. They also serve the function of gauging the opinion of the members, and communicating it to party leaders. The actual whips issued to members can be of three types: one-line, two-line or three-line, depending on the number of times the text is underlined, reflecting the urgency and importance of the whip.[24]

The Office of Whip is a purely British Institution. This Institution is central to the working of the British Parliament. The Whips are not officially recognised in the standing orders of the House of Commons or the House of Lords but long tradition has given them a secure place in the parliamentary machine. The first recorded use of the term whipper-in in the parliamentary

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[23] Subhash C. Kashyap, "*Anti-defection Law and Parliamentary Privileges*", 74, N.M. Tripathi Private Ltd. 1995.

[24] Subhash C. Kashyap, "*Anti-defection Law and Parliamentary Privileges*", pg 93, Universal Law Publishing Co Pvt Ltd., 2nd ed., 2003.

sense occurs in 1772. The efficient and smooth running of the parliamentary machine depends largely upon the Whips. In the Parliamentary form of Government, the Whips who are drawn from the Party in power and the party or parties in opposition form vital links in the internal Organisation of a party inside Parliament. They are important office-bearers of the parties in Parliament.

The word 'Whip' is derived from the 'Whippers-in' employed by a hunt to look after the hounds and keep them together in the field. Parliamentary whips are supposed to be similar disciplinarians controlling the flock of members in their party. There is a good dose of exaggeration in whips in this way. Their modern job is more that of personnel manager. The parliamentary application of the expression can be traced to the great parliamentary orator Edmund Burke, who in a debate in the House of Commons in May, 1769, described how the King's Ministers had made great efforts to bring their followers together and how they had sent for their friends to the North and to Paris for "Whipping' them in.[25] Since then the phrase caught the public fancy and became popular. In this sense the Concise Oxford Dictionary describes a 'Whip' as an "official appointed to maintain discipline among, secure attendance of, and give necessary information to, members of his party". Later, the term was applied to the call or appeal made by such a person, and is defined by the dictionary as "the written notice (variously underlined with number of lines representing degrees of urgency) requesting attendance on particular occasion." The use of the word 'Whip' is, therefore, applied to the person as well as to the document.

IV.I. Concept of Whip in UK

In the United Kingdom, the chief whip of the governing party in the House of Commons is customarily appointed as Parliamentary Secretary to the Treasury so that the incumbent, who represents the whips in general, has a seat and a voice in the Cabinet. Whips report to the prime minister on any possible backbench revolts and the general opinion of MPs within the party, and upon the exercise of the patronage, which is used to motivate and reward loyalty.

There are three categories of whip that are issued on particular business. An express instruction on how to vote could constitute a breach of parliamentary privilege, so the party's wishes are expressed unequivocally but indirectly. These whips are issued to MPs in the form of a letter outlining the parliamentary schedule, with a sentence such as "Your attendance is absolutely essential" next to each debate in which there will be a vote, underlined one, two or three times according to the severity of the whip:

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[25] *Id* at 92.

i) A single-line whip is a guide to what the party's policy would indicate, and notification of when the vote is expected to take place; this is non-binding for attendance or voting.

ii) A two-line whip, sometimes known as a double-line whip, is an instruction to attend and vote; partially binding for voting, attendance required unless prior permission given by the whip.

iii) A three-line whip is a strict instruction to attend and vote, breach of which would normally have serious consequences. Permission not to attend may be given by the whip, but a serious reason is needed. Breach of a three-line whip can lead to expulsion from the parliamentary political group in extreme circumstances and may lead to expulsion from the party. Consequently, three-line whips are generally only issued on key issues, such as votes of confidence and supply. [citation needed] The nature of three-line whips and the potential punishments for revolt vary dramatically among parties and legislatures. Disobeying a three-line whip is a newsworthy event, indicating as it does a potential mutiny; an example was the decision on 10 July 2012 by 91 Conservative MPs to vote against Prime Minister David Cameron on the issue of reform of the House of Lords.

In the UK, the violation of a three-line whip is taken seriously — occasionally resulting in the expulsion of the member from the party. Such a member can continue in Parliament as an independent until the party admits the member back into the party. However, political parties sometimes announce a "free vote", in which MPs are allowed to vote as they wish on certain issues.

IV.II. Concept of Whip in USA

In the United States there are legislatures at the local (city councils, town councils, county boards, etc.), state, and federal levels. The federal legislature (Congress), state legislatures, and many county and city legislative bodies are divided along party lines and have whips, as well as majority and minority leaders. Similarly, the whip may also be known as the assistant majority or assistant minority leader.

Both houses of Congress, the House of Representatives and Senate, have majority and minority whips. They in turn have subordinate "regional" whips. While members of Congress often vote along party lines, the influence of the whip is weaker than in the UK system. One reason is that a considerable amount of money is raised by individual candidates, and members of Congress are rarely ejected from a party. In addition, because pre selection of candidates for office is generally done through a primary election open to a wide number of voters, it is difficult for the national party

to deselect a member of Congress who defies their party in a way that pleases their constituency.

Because members of Congress cannot serve simultaneously in executive positions, a whip in the United States cannot bargain with a member by using as an inducement the possibility of promotion or demotion in a sitting administration. There is, however, a highly structured committee system in both houses of Congress, and a whip may be able to use promotion or demotion within that system instead. In the House of Representatives, the influence of a single member individually is relatively small and therefore depends a great deal on the representative's seniority (i.e., in most cases, on the length of time they have held office).

In the Senate, the majority whip is the third-highest ranking individual in the majority party (the party with the most seats). The majority whip is outranked by the majority leader and, unofficially, the president pro tempore; because the office of president pro tempore is largely honorific and usually given to the longest-serving senator of the majority, the majority whip is in reality the second-ranking senator in the majority conference in terms of actual power. Similarly, in the House, the majority whip is outranked by both the majority leader and the speaker. Unlike the Senate's presiding officer, the Speaker is the leader of his or her party's caucus in the House.

In both the House and the Senate, the minority whip is the second highest-ranking individual in the minority party (the party with the lesser number of legislators in a legislative body), outranked only by the minority leader.

The whip position was first created in the House of Representatives in 1897 by Republican Speaker Thomas Reed, who appointed James A. Tawney as the first whip. The first Democratic whip, Oscar Wilder Underwood, was appointed around 1900.[18][19] In the Senate, the position was created in 1913 by John W. Kern, chair of the Democratic caucus, when he appointed J. Hamilton Lewis as the first whip, while Republicans later chose James Wadsworth as the party's first in 1915.

IV. III. Critical analysis of the usage of whip by political parties in India

i) In US, primaries determine who would be the candidate for any seat in the legislature, party leaders cannot use the instrument of issuing party tickets to ensure greater party discipline. In India, since party leaders determine who is nominated for the next election from any constituency, there is already a great incentive for MPs to obey the party line on most occasions. This implies that MPs will differ from the party line only in exceptional circumstances. The anti-defection law and the whip system reduce the MPs to a mere headcount on the floor of the House, and further

deter them from exercising their judgment on major issues. The longer route of building consensus on most issues amongst the majority of the legislators concerned, however arduous, must be the way forward.

ii) The main intent of the law was to deter "the evil of political defections" by legislators motivated by lure of office or other similar considerations. Therefore, it is pertinent to determine whether this law should be valid for all votes or only for those that determine the stability of the government (such as the confidence and no-confidence motions). Several practitioners are of the view that the whip should be applicable only to motions where the survival of the government is in question, and not to ordinary legislation. Speaking on the practice of issuing whips in India, the chairman of the Rajya Sabha recently said that "we need to build a political consensus so that the room for political and policy expression in Parliament for an individual member is expanded. This could take many forms. For example, the issuance of a whip could be limited to only those bills that could threaten the survival of a government, such as money bills or no-confidence motions. In other legislative and deliberative business of Parliament, this would enable members to exercise their judgment and articulate their opinion."

A member may be unable to express his actual belief or the interests of his constituents. Therefore, a case may be made for restricting the law to confidence and no-confidence motions. The Dinesh Goswami Committee on electoral reforms (1990) recommended this change, while the Law Commission (170^{th} report, 1999) suggested that political parties issue whips only when the government was in danger.

iii) That a representative is elected on the basis of the party's programme and the trust of people upon him and his party programme must not be cheated. Therefore, the rationale of this law needs to be extended to pre-poll alliances. The Law Commission proposed this change with the condition that partners of such alliances inform the Election Commission before the elections.

iv) The Venkatachaliah Commission recommended that defectors should be barred from holding any ministerial or remunerative political office for the remaining term of the House. It also said that the vote of any defector should not be counted in a confidence or no-confidence motion. There is need to review whether there is any need for additional penalties and restrictions upon the defected member.

v) Since 1985, there have been a total of 19 cases where MPs lost their seat in Parliament for disobeying the party whip. In the 24 years of this law, complaints have been made against 62 Lok Sabha MPs. Of these, 26 were disqualified. It is pertinent to note that ten of these disqualifications were after the trust vote of July 2008 (over India-US civil nuclear co-

operation). Four cases were made against Rajya Sabha MPs (two in 1989 and two in 2008) and all were upheld. In state legislatures, up to 2004, out of 268 complaints, 113 were upheld. There is no data on the frequency of whips issued in India.

Therefore, as per the said analysis, it is axiomatic that a member of either houses of parliament or state legislature or council, as the case may be, is bound to follow the instruction of his original political party in all matters that are put to vote in the House, failing which he will be disqualified, unless of course condoned by the original political party. In this way, even the members of parliament inside the parliament precincts are absolutely controlled by their political parties.

V. Other Reasons for Political Party Being 'State'

i) Political Parties are substantially financed by the Central Government

INC, BJP, CPI (M), CPI, NCP and BSP have been substantially financed by the Central Government and hence considered public authority under Section 2(h) (ii) of the RTI Act. Besides, they are also allotted land in Delhi and other state capitals, accommodations and bungalows are provided on concessional rates and they also enjoy total tax exemption against the incomes under Section 13 A of the Income Tax Act. Public Character: The criticality of the role being played by these Political Parties in our democratic set up and the nature of duties performed by them also point towards their public character, bringing them in the ambit of State under Article 12 of the Constitution of India.[26]

ii) Political parties are unique institution of the modern Constitutional State

A political party is an effective intermediary which links social forces and ideologies to governmental institutions and is a connecting link between government and public opinion. It is a mechanism designed to solve the problem of brining the new mass voters into political community.[27] Central Information Commission's order CIC/AT/A/2007/01029 & 01263-01270, dated 29.04.2008, provides that political parties are unique institution of the modern Constitutional State that even though political parties are non-governmental but they wield and influence the exercise of governmental power and. The relevant part of the order reads:

> *"28. Political parties are a unique institution of the modern Constitutional State. These are essentially civil society*

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[26] Association for Democratic Reforms Vs. Union of India & Ors., Writ Petition(s) (Civil) No(s). 333/2015. (Pending before the Hon'ble Supreme Court).

[27] K.L. Kamal, "*Party Politics in an Indian State*", 3, S. Chand & Co 1969.

institutions and are, therefore, non-governmental. Their uniqueness lies in the fact that in spite of being nongovernmental, political parties come to wield or directly or indirectly influence, exercise of governmental power. It is this link between State power and political parties that has assumed critical significance in the context of the Right of Information — an Act which has brought into focus the imperatives of transparency in the functioning of State institutions. It would be facetious to argue that transparency is good for all State organs, but not so good for the political parties, which control the most important of those organs. For example, it will be a fallacy to hold that transparency is good for the bureaucracy, but not good enough for the political parties which control those bureaucracies through political executives".

The Law Commission of India in its 170th Report titled on 'Reform of the Electoral Laws' while making a recommendation for transparency in the functioning of political parties stated in Para 3.1.2.1 viz.:

"…it must be said that if democracy and accountability constitute the core of our constitutional system, the same concepts must also apply to and bind the political parties which are integral to parliamentary democracy. It is the political parties that form the government, man the Parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties. A political party which does not respect democratic principles in its internal working cannot be expected to respect those principles in the governance of the country. It cannot be dictatorship internally and democratic in its functioning outside" (Para 3.1.2.1).[28]

The obligations which are made by the constitution upon the State, the same are also made upon political parties. If democracy and accountability in democracy forms the core of our constitutional system, the same concepts must also be applicable to the political parties which are essential to parliamentary democracy.

VI. Conclusion

Therefore, in the light of the said analysis, it may safely be concluded that the member of either houses of Parliament or State

[28] Law Commission of India, 170th Report, 'Reform of the Electoral Laws', Para 3.1.2.1.

legislature or Council, as the case may be, is bound to follow the instruction of his original political party in all matters that are put to vote in the House, failing which he will be disqualified, unless of course condoned by the original political party. In this way, even the members of Parliament inside the Parliament precincts are absolutely controlled by their political parties through their whip. Further, the finance of many political parties in India by the Central government along with their role being played in our democratic set up and the nature of duties performed by them point towards their public character. Moreover, it has also been noticed that a political party is an effective intermediary which links social forces and ideologies to governmental institutions and is a connecting link between government and public opinion. Therefore, political parties in India due to their certain specific functions mentioned above, can very well be considered as the instrumentality or agency of Government and fall under the ambit of "State" enshrined under Article 12 of the Constitution of India.

However, even on the assumption, that if political parties do not fall under the category of "State" under Article 12, then also the performance of public functions by them cannot be isolated. They may be private in the property sense but are public in the functional sense. Thus, what can be analyzed is that even they if do not fall under the realm of "State", they cannot escape from the scrutiny of judicial review.

Therefore, in the coalition of Government, if any political party withdraws its support from the other political party without assigning any valid reason and work arbitrarily, then it can very well be subject to judicial review and be amenable to writ jurisdiction of the Indian Courts.