



KERALA LEGISLATURE

**THE MEMBERS
OF
THE KERALA LEGISLATIVE ASSEMBLY
(DISQUALIFICATION ON GROUND OF
DEFECTION) RULES, 1986**

**SECRETARIAT OF THE KERALA LEGISLATURE
THIRUVANANTHAPURAM
2016**

**THE MEMBERS OF THE KERALA LEGISLATIVE ASSEMBLY
(DISQUALIFICATION ON GROUND OF DEFECTION)
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In exercise of the powers conferred by paragraph 8 of the Tenth Schedule to the Constitution of India, the Speaker, Kerala Legislative Assembly, hereby makes the following rules, namely :—

1. These rules may be called the Members of the Kerala Legislative Assembly (Disqualification on Ground of Defection) Rules, 1986. **Short Title**

2. In these rules, unless the context otherwise requires,— **Definitions**

- (a) 'Bulletin' means the Bulletin of the Kerala Legislative Assembly ;
- (b) 'Committee' means the Committee of Privileges of the Kerala Legislative Assembly ;
- (c) 'Form' means a form appended to these rules ;
- (d) 'date of commencement', in relation to these rules means the date on which these rules take effect under sub-paragraph (2) of paragraph 8 of the Tenth Schedule ;
- (e) 'House' means the Kerala Legislative Assembly ;
- (f) 'leader', in relation to a legislature party, means a member of the party chosen by it as its leader and includes any other member of the party authorised by the party to act, in the absence of the leader as, or discharge the functions of, the leader of the party for the purposes of these rules ;
- (g) 'member' means a member of the Kerala Legislative Assembly ;
- (h) 'Tenth Schedule' means the Tenth Schedule to the Constitution of India ;
- (i) 'Secretary' means the Secretary to the House and includes any person for the time being performing the duties of the Secretary.

Information to be furnished by leader of a legislature party

3. (1) The leader of each legislature party (other than a legislature party consisting of only one member) shall, within thirty days after the first sitting of the House, or, where such legislature party is formed after the first sitting, within thirty days after its formation, or, in either case within such further period as the Speaker may for sufficient cause allow, furnish the following to the Speaker, namely:—

- (a) a statement (in writing) containing the names of members of such legislature party together with other particulars regarding such members as in Form 1 and the names and designations of the members of such party who have been authorised by it for communicating with the Speaker for purposes of these rules ;
- (b) a copy of the rules and regulations (whether known as such or as constitution or by any other name) of the political party concerned ; and
- (c) where such legislature party has any separate set of rules and regulations (whether known as such or as constitution or by any other name), also a copy of such rules and regulations.

(2) Where a legislature party consists of only one member, such member shall furnish a copy of the rules and regulations mentioned in clause (b) of sub-rule (1) to the Speaker, within thirty days after the first sitting of the House or, where he has become a member of the House after the first sitting, within thirty days after he has taken his seat in the House, or, in either case within such further period as the Speaker may for sufficient cause allow.

(3) In the event of any increase in the strength of a legislature party consisting of only one member, the provisions of sub-rule (1) shall apply in relation to such legislature party as if such legislature party had been formed on the first date on which its strength increased.

(4) Whenever any change takes place in the information furnished by the leader of a legislature party under sub-rule (1) or by a member under sub-rule (2), he shall, within thirty days thereafter, or, within such further period as the Speaker may for sufficient cause allow, furnish in writing information to the Speaker with respect to such change.

(5) In the case of the House in existence on the date of commencement of these rules, the reference in sub-rules (1) and (2) to the date of the first sitting of the House shall be construed as a reference to the date of commencement of these rules.

(6) Where a member belonging to any political party votes or abstains from voting in the House contrary to any direction issued by such political party 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, the leader of the legislature party concerned or where such member is the leader, or as the case may be, the sole member of such legislature party, such member, shall, as soon as may be after the expiry of fifteen days from the date of such voting or abstention and in any case within thirty days from the date of such voting or abstention, inform the speaker as in Form II whether such voting or abstention has or has not been condoned by such political party, person or authority.

Explanation.—A member may be regarded as having abstained from voting only when he, being entitled to vote, voluntarily refrained from voting.

4. (1) Every member who has taken his seat in the House before the date of commencement of these rules shall furnish to the Secretary, within thirty days from such date or within such further period as the Speaker may for sufficient cause allow, a statement of particulars and declaration as in Form III.

(2) Every member who takes his seat in the House after the commencement of these rules shall, before making and subscribing an oath or affirmation under Article 188 of the Constitution and taking his seat in the House, deposit with the Secretary, his Election Certificate or, as the case may be, a certified copy of the notification nominating him as a member and also furnish to the Secretary a statement of particulars and declaration as in Form III.

Explanation.—For the purposes of this sub-rule, "Election Certificate" means the Certificate of Election issued under the Representation of the People Act, 1951 (43 of 1951) and the rules made thereunder.

(3) A summary of the information furnished by the members under this rule shall be published in the Bulletin and if any discrepancy therein is pointed out to the satisfaction of the Speaker, necessary corrigendum shall be published in the Bulletin.

**Information
etc., to be
furnished by
members**

Register of information as to members 5. (1) The Secretary shall maintain, as in Form IV, a register based on the information furnished under rules 3 and 4 in relation to the members.

(2) The information in relation to each member shall be recorded on a separate page in the Register.

References to be by petitions 6. (1) No reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule shall be made except by a petition in relation to such member made in accordance with the provisions of this rule.

(2) A petition in relation to a member may be made in writing to the Speaker by any other member:

Provided that a petition in relation to the Speaker shall be addressed to the Secretary.

(3) The Secretary shall,—

(a) as soon as may be after the receipt of a petition under the proviso to sub-rule (2) make a report in respect thereof to the House; and

(b) as soon as may be after the House has elected a member in pursuance of the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule place the petition before such member.

(4) Before making any petition in relation to any member, the petitioner shall satisfy himself that there are reasonable grounds for believing that a question has arisen as to whether such member has become subject to disqualification under the Tenth Schedule.

(5) Every petition,—

(a) shall contain a concise statement of the material facts on which the petitioner relies; and

(b) shall be accompanied by copies of the documentary evidence, if any, on which the petitioner relies and where the petitioner relies on any information furnished to him by any person, a statement containing the names and addresses of such person and the gist of such information as furnished by each such person.

(6) Every petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the verification of pleadings.

(7) Every annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

7. (1) On receipt of a petition under rule 6, the Speaker shall consider whether the petition complies with the requirements of that rule. **Procedure**

(2) If the petition does not comply with the requirements of rule 6, the Speaker shall dismiss the petition and intimate the petitioner accordingly.

(3) If the petition complies with the requirements of rule 6, the Speaker shall cause copies of the petition and of the annexures thereto to be forwarded,—

(a) to the member in relation to whom the petition has been made; and

(b) where such member belongs to any legislature party and such petition has not been made by the leader thereof, also to such leader, and such member or leader shall, within seven days of the receipt of such copies, or within such further period as the Speaker may for sufficient cause allow, forward his comments in writing thereon to the Speaker.

(4) After considering the comments, if any, in relation to the petition, received under sub-rule (3) within the period allowed (whether originally or on extension under that sub-rule), the Speaker may either proceed to determine the question or, if he is satisfied, having regard to the nature and circumstances of the case that it is necessary or expedient so to do, refer the petition to the Committee for making a preliminary inquiry and submitting a report to him.

(5) The Speaker shall, as soon as may be after referring a petition to the Committee under sub-rule (4), intimate the petitioner accordingly and make an announcement with respect to such reference in the House or if the House is not then in session cause the information as to the reference to be published in the Bulletin.

(6) Where the Speaker makes a reference under sub-rule (4) to the Committee, he shall proceed to determine the question as soon as may be after receipt of the report from the Committee.

(7) The procedure which shall be followed by the Speaker for determining any question and the procedure which shall be followed by the Committee for the purpose of making a preliminary inquiry under sub-rule (4) shall be, so far as may be, the same as the procedure for inquiry and determination by the Committee of any question as to breach of privilege of the House by a member, and neither the Speaker nor the Committee shall come to any finding that a member has become subject to disqualification under the Tenth Schedule without affording a reasonable opportunity to such member to represent his case and to be heard in person.

(8) The provisions of sub-rules (1) to (7) shall apply with respect to a petition in relation to the speaker, as they apply with respect to a petition in relation to any other member and for this purpose, reference to the speaker in these sub-rule shall be construed as including references to the member elected by the House under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule.

Decision on petitions

8. (1) At the conclusion of the consideration of the petition the Speaker or, as the case may be, the member elected under the proviso to sub-paragraph (1) of paragraph 6 of the Tenth Schedule shall by order in writing,—

(a) dismiss the petition, or

(b) declare that the member in relation to whom the petition has been made has become subject to disqualification under the Tenth Schedule, and cause copies of the order to be delivered or forwarded to the petitioner, the member in relation to whom the petition has been made and to the leader of the legislature party, if any, concerned.

(2) Every decision declaring a member to have become subject to disqualification under the Tenth Schedule shall be reported to the House forthwith if the House is in session, and if the House is not in session, immediately after the House reassembles.

(3) Every decision referred to in sub-rule (1) shall be published in the Bulletin and notified in the Official Gazette and copies of such decision forwarded by the Secretary to the Election Commission of India and the State Government.

Directions as to detailed working of these rules

9. The Speaker may, from time to time, issue such directions as he may consider necessary in regard to the detailed working of these rules.

FORM I
[See Rule 3 (1) (a)]

Name of the Legislature Party:

Name of the corresponding
Political Party:

<i>Sl. No.</i>	<i>Name of the Member (in block letters)</i>	<i>Father's/Husband's name</i>	<i>Permanent Address</i>	<i>Name of the Constituency from which elected</i>
(1)	(2)	(3)	(4)	(5)

Date:

*Signature of the Leader of the
Legislature Party.*

FORM II
[See Rule 3 (6)]

To

The Speaker,
Kerala Legislative Assembly.

Sir,

At the sitting of the House held on(date)

during voting on.....
*Shri.....M.L.A.
member of
(Name of political party), and member
of
(name of legislature party) had voted/
abstained from voting.

.....(subject matter).....
*I.....(name
of the member) M. L. A. member of
.....
(name of political party) and leader
of/sole member of
.....(name of
legislature party) voted/abstained
from voting

contrary to the direction issued by†
(*person/authority/party) without obtaining the prior permission of the said†
.....person/authority/party)

2. On (date).....the aforesaid matter
was considered by.....†(*person/authority/party) and the said
*voting/abstention was *condoned/was not condoned by *him/it.

Date:

Yours faithfully,
(Signature)

* Strike out in appropriate words/portions.

† (Here mention the name of the person/authority/party, as the case may be, who had issued the direction).

FORM III
(See Rule 4)

1. Name of the member :
(in block letters)
2. Father's/husband's name :
3. Permanent Address :

4. Trivandrum Address :

5. Date of election/nomination :
6. Party affiliation as on—
 - (i) Date of election/nomination :
 - (ii) Date of signing this form :

DECLARATION

I,hereby declare that the information given above is true and correct.

In the event of any change in the information above, I undertake to intimate the Speaker immediately.

Date:

*Signature/Thumb impression of
member.*

FORM IV
[See Rule 5 (1)]

<i>Name of the member (in block letters)</i>	<i>Father's/ Husband's name</i>	<i>Permanent Address</i>	<i>Trivandrum Address</i>	<i>Name of the Constituency from which elected</i>	<i>Date of election/ nomination</i>	<i>Name of Political party to which he belongs</i>	<i>Name of legislature party to which he belongs</i>	<i>Remarks</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

THE CONSTITUTION (FIFTY-SECOND AMENDMENT)
ACT, 1985

An Act further to amend the Constitution of India.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called THE CONSTITUTION (FIFTY-SECOND AMENDMENT) ACT, 1985.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Amendment of Article 101.*—In Article 101 of the Constitution, in sub-clause (a) of clause (3), for the words, brackets and figures “clause (1) of article 102”, the words, brackets and figures “clause (1) or clause (2) of article 102” shall be substituted.

3. *Amendment of Article 102.*—In Article 102 of the Constitution,—

(a) for the brackets, figure and words “(2) For the purposes of this article”, the words “*Explanation.*—For the purposes of this clause” shall be substituted;

(b) the following clause shall be inserted at the end, namely:—

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

4. *Amendment of Article 190.*—In Article 190 of the Constitution, in sub-clause (a) of clause (3), for the words, brackets and figures “clause (1) of article 191”, the words, brackets and figures “clause (1) or clause (2) of article 191” shall be substituted.

5. *Amendment of Article 191.*—In Article 191 of the Constitution,—

(a) for the brackets, figure and words “(2) For the purposes of this article”, the words “*Explanation.*—For the purposes of this clause” shall be substituted;

(b) the following clause shall be inserted at the end, namely:—

“(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule”.

6. *Addition of Tenth Schedule.*—After the Ninth Schedule to the Constitution, the following Schedule shall be added, namely:—

TENTH SCHEDULE

[Article, 102 (2) & 191 (2)]

Provisions as to disqualification on ground of defection.

1. *Interpretation.*—In this Schedule, unless the context otherwise requires,—

(a) “House” means either House of Parliament or the Legislative Assembly or, as the case may be either House of the Legislature of a State;

(b) “Legislature party”, in relation to a member of a House belonging to any political party in accordance with the provisions of paragraph 2 or paragraph 4, means the group consisting of all the members of that House for the time being belonging to that political party in accordance with the said provisions;

(c) “original political party”, in relation to a member of a House, means the political party to which he belongs for the purposes of sub-paragraph (1) of paragraph 2;

(d) paragraph means a paragraph of this Schedule.

2. *Disqualification on ground of defection.*—(1) Subject to the provisions of paragraphs 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.

Explanation.—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 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 sub-paragraph (3) of this paragraph.

*3.

4. *Disqualification on ground of defection not to apply in case of merger.*—(1) A member of a House shall not be disqualified under sub-paragraph (1) of paragraph 2 where his original political party merges with another political party and he claims that he and any other members of his original political party—

(a) have become members of such other political party or, as the case may be, of a new political party formed by such merger; or

* Omitted vide the constitution (Ninety-first Amendment) Act, 2004.

(b) have not accepted the merger and opted to function as a separate group, and from the time of such merger, such other political party or new political party or group, as the case may be, 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 sub-paragraph.

(2) For the purposes of sub-paragraph (1) of this paragraph, the merger of the original political party of a member of a House shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.

5. *Exemption.*—Notwithstanding anything contained in this Schedule, a person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule,—

(a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoining that political party or become a member of another political party; or

(b) if he, having given up by reason of his election to such office his membership of the political party to which he belonged immediately before such election, rejoins such political party after he ceases to hold such office.

6. *Decision on questions as to disqualification 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 proceedings 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.

*7. *Bar of jurisdiction of courts.*—Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule.

8. *Rules.*—(1) Subject to the provisions of sub-paragraph (2) of this paragraph, the Chairman or the Speaker of a House may make rules for giving effect to the provisions of this Schedule, and in particular, and without prejudice to the generality of the foregoing, such rules may provide for—

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

(b) the report which the leader of a legislature party in relation to a member of a House shall furnish with regard to any condonation of the nature referred to in clause (b) of sub-paragraph (1) of paragraph 2 in respect of such member, the time within which and the authority to whom such report shall be furnished;

(c) the reports, which a political party shall furnish with regard to admission to such political party of any members of the House and the officer of the House to whom such reports shall be furnished; and

(d) the procedure for deciding any question referred to in sub-paragraph (1) of paragraph 6 including the procedure for any inquiry which may be made for the purpose of deciding such question.

(2) The rules made by the Chairman or the Speaker of a House under sub-paragraph (1) of this paragraph shall be laid as soon as may be after they are made before the House for a total period of thirty days which may be comprised in one session or in two or more successive sessions and shall take effect upon the expiry of the said period of thirty days unless they are sooner approved with or without modifications or disapproved by the House and where they are so approved, they shall take effect on such approval in the form in which they were laid or in such modified form, as the case may be, and where they are so disapproved, they shall be of no effect.

* Struck down by Supreme Court in *Shri Kihoto Hollohan V. Shri Zachillhu and others* for want of ratification by States [JT 1992 (1) S. C. 600].

(3) The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this Constitution direct that any wilful contravention by any person of the rules made under this paragraph may be dealt with in the same manner as a breach of privilege of the House.

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2016

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