



सदस्यों की दल-परिवर्तन के आधार पर निरर्हता

DISQUALIFICATION OF MEMBERS ON GROUND OF DEFECTION

राज्य सभा सचिवालय
नई दिल्ली
RAJYA SABHA SECRETARIAT
NEW DELHI
2012

प्रस्तावना

संविधान (बावनवां संशोधन) अधिनियम, 1985 के द्वारा, जो 1 मार्च, 1985 को प्रवृत्त हुआ था, संविधान में दल-परिवर्तन के आधार पर निरर्हता संबंधी एक नया उपबंध सम्मिलित किया गया है। इस अधिनियम के द्वारा संविधान के अनुच्छेद 101, 102, 190 और 191 में संशोधन किया गया था और उसमें दसवीं अनुसूची को जोड़ा गया था।

संविधान की दसवीं अनुसूची का पैरा 8(1) दोनों सभाओं के पीठासीन अधिकारियों को इस अनुसूची के उपबंधों को लागू करने के लिए नियम बनाने की शक्तियां प्रदान करता है। इस शक्ति का प्रयोग करते हुए राज्य सभा के सभापति ने राज्य सभा सदस्य (दल-परिवर्तन के आधार पर निरर्हता) नियम, 1985 बनाये थे। ये नियम 18 मार्च, 1986 से प्रवृत्त हुए थे।

इस पुस्तिका में संविधान (बावनवां संशोधन) अधिनियम, 1985, संविधान (इक्यानवेवां संशोधन) अधिनियम, 2003 द्वारा यथासंशोधित संविधान की दसवीं अनुसूची तथा राज्य सभा सदस्य (दल-परिवर्तन के आधार पर निरर्हता) नियम, 1985 द्वारा यथासंशोधित संविधान के अनुच्छेद 101 और 102 के सुसंगत उपबंध (अंग्रेजी तथा हिन्दी दोनों में) अंतर्विष्ट हैं।

नई दिल्ली;
30 मार्च, 2012

विवेक कुमार अग्निहोत्री,
महासचिव।

PREFACE

By the Constitution (Fifty-second Amendment) Act, 1985, which came into force on the 1st March, 1985, a new provision as to disqualification on ground of defection has been incorporated in the Constitution. The Act amended articles 101, 102, 190 and 191 of the Constitution and added to Tenth Schedule thereto.

Paragraph 8(1) of the Tenth Schedule to the Constitution empowers the Presiding Officers of two Houses to make rules for giving effect to the provisions of this Schedule. In exercise of this power Chairman, Rajya Sabha, framed the Members of Rajya Sabha (Disqualification on ground of Defection) Rules, 1985. These Rules came into force with effect from the 18th March, 1986.

This booklet contains the relevant provisions of articles 101 and 102 of the Constitution, as amended by the Constitution (Fifty-second Amendment) Act, 1985, the Tenth Schedule to the Constitution as amended by the Constitution (Ninety-first Amendment) Act, 2003 and the Members of Rajya Sabha (Disqualification on ground of Defection) Rules, 1985 (both in English and Hindi).

NEW DELHI;
30 March, 2012

V. K. AGNIHOTRI,
Secretary-General.

विषय-सूची
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CONSTITUTIONAL PROVISIONS

DISQUALIFICATION ON GROUND OF DEFECTION

CONSTITUTIONAL PROVISIONS

Article 101. **Vacation of Seats—**

- | | | | | | | | | |
|-----|--|---|---|---|---|---|---|---|
| (1) | x | x | x | x | x | x | x | x |
| (2) | x | x | x | x | x | x | x | x |
| (3) | If a member of either House of Parliament— | | | | | | | |
| | (a) becomes subject to any of the disqualifications mentioned in
¹ [Clause (1) or Clause (2) of article 102], or | | | | | | | |
| | (b) x x x x x x x x | | | | | | | |
| | his seat shall thereupon become vacant: | | | | | | | |
| | x x x x x x x x | | | | | | | |
| (4) | x | x | x | x | x | x | x | x |

Article 102. **Disqualifications for membership—**

- | | | | | | | | | |
|-----|---|---|---|---|---|---|---|---|
| (1) | x | x | x | x | x | x | x | x |
|-----|---|---|---|---|---|---|---|---|
- ²[(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.]

¹ Subs. by the Constitution (Fifty-second Amendment) Act, 1985, s.2.

² Ins. by s.3 *ibid.*

TENTH SCHEDULE

[Articles 102(2) and 191(2)]

Provisions as to disqualification on ground of defection

Interpretation.

1. 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 ¹[x x x] 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.

Disqualification on ground of defection.

2. (1) Subject to the provisions of ²[paragraphs 4 and 5], a member of a House belonging to any political party shall be disqualified for being a member of 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

¹ The words and figure "Paragraph 3 or, as the case may be," omitted by the Constitution (Ninety-first Amendment) Act, 2003, s.5 (w.e.f. 1.1.2004).

² Subs. by s.5 *ibid*, for "paragraphs 3, 4 and 5".

Tenth Schedule

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 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.

Tenth Schedule

(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. *[Disqualification on ground of defection not to apply in case of a split Rep. by the Constitution (Ninety-first Amendment) Act, 2003, s.5]*

Disqualification on ground of defection not to apply in case of merger.

4. (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

(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

Tenth Schedule

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. 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,—

Exemption.

(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, rejoin 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. (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:

Decision on questions as to disqualification on ground of defection.

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.

Tenth Schedule

(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.

Bar of jurisdiction of courts.

7. 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.

Rules.

8. (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

Tenth Schedule

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.

(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.'

**THE MEMBERS OF RAJYA SABHA
(DISQUALIFICATION ON GROUND OF DEFECTION)
RULES, 1985**

THE MEMBERS OF RAJYA SABHA
(DISQUALIFICATION ON GROUND OF DEFECTION)
RULES, 1985

In exercise of the powers conferred by paragraph 8 of the Tenth Schedule to the Constitution of India, the Chairman, Rajya Sabha, hereby makes the following rules, namely:—

1. These rules may be called the Members of Rajya Sabha (Disqualification on ground of Defection) Rules, 1985 **Short title.**

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

(a) 'Bulletin' means the Bulletin of the Council of States (Rajya Sabha);

(b) 'Committee' means the Committee of the Privileges of the Council of States (Rajya Sabha);

(c) 'Council' means the Council of States (Rajya Sabha);

(d) 'Form' means a form appended to these rules;

(e) '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;

(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 Council of States (Rajya Sabha);

(h) 'Tenth Schedule' means the Tenth Schedule to the Constitution of India;

Disqualification Rules

(i) 'Secretary-General' means the Secretary-General to the Council of States (Rajya Sabha) and includes any person for the time being performing the duties of the Secretary-General.

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 from the date of commencement of these rules or, where such legislature party is formed after such date, within thirty days from the date of its formation, or, in either case, within such further period as the Chairman may for sufficient cause allow, furnish the following to the Chairman, 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-I and the names and designations of the members of such party who have been authorised by it for communicating with the Chairman 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 Chairman within thirty days from the date of commencement of these rules or, where he has become a member of the Council after such date, within thirty days from the date on which he has taken his seat in the Council or, in either case, within such further period as the Chairman may for sufficient cause allow.

Disqualification Rules

(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, as soon as may be thereafter and in any case within thirty days from the date on which such change has taken place or within such further period as the Chairman may for sufficient cause allow, furnish in writing information to the Chairman with respect to such change.

(5) Where a member belonging to any political party votes or abstains from voting in the Council 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 thereafter and in any case within thirty days from the date of such voting or abstention, inform the Chairman 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 Council before the date of commencement of these rules shall furnish to the Secretary-General within thirty days from such date or within such further period as the Chairman may for sufficient cause allow, a statement of particulars and declaration as in Form-III.

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

Disqualification Rules

(2) Every member who takes his seat in the Council after the commencement of these rules shall, before making and subscribing an oath or affirmation under article 99 of the Constitution and taking his seat in the Council, deposit with the Secretary-General 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-General 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 Chairman, necessary corrigendum shall be published in the Bulletin.

Register of information as to members.

5. (1) The Secretary-General 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 Chairman by any other member.

(3) 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.

Disqualification Rules

- (4) 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 persons and the gist of such information as furnished by each such person.

(5) 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.

(6) 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 Chairman shall consider whether the petition complies with the requirements of the rule.

Procedure.

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

(3) If the petition complies with the requirements of rule 6, the Chairman 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 Chairman may for sufficient cause allow, forward his comments in writing thereon to the Chairman.

Disqualification Rules

(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 Chairman 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 Chairman 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 Chairman 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 Chairman 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 applicable for the determination by the Committee of any question as to breach of privilege of the Council by a member, and neither the Chairman 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.

Decision on Petitions.

8. (1) At the conclusion of the consideration of the petition, the Chairman 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,

Disqualification Rules

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 Council forthwith if the Council is in session, and if the Council is not in session immediately after the Council 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 shall be forwarded by the Secretary-General to the Election Commission of India and the Central Government.

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

**Directions as to
detailed
working of
these rules.**

FORM I

[See Rule 3(1)]

Name of the legislature party:

Name of the corresponding political party:

Sl. No.	Name of the Member (in block letters)	Father's/Husband's Name	Permanent address	Name of the State from which elected
1	2	3	4	5

Date:

Signature of the leader of the legislature Party

FORM II
[See Rule 3(5)]

To

The Chairman,
Rajya Sabha.

Sir,

At the sitting of the Council held on..... (date) during
voting on.....(subject-matter)

*Shri.....M.P.
(Division No.....),
member of.....
(name of political party), and
member of.....
(name of legislature party) had voted/
abstained from voting,

*I.....(name of
the member), M.P. (Division
No.....), 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.....^{ss}(*person/authority/party)
and the said voting*/abstention was condoned*/was not condoned
by him*/it.

Your faithfully,

Date:

(Signature)

* Strike out inappropriate words/portion.

^{ss} (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. Delhi Address :
- 5. Date of election/nomination :
- 6. Party affiliation as on— :
 - (i) *date of election/nomination* :
 - *(ii) *the 28th February, 1985* :
 - (iii) *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 inform the Chairman immediately.

Date:

Signature/thumb impression of Member

* To be filled in by members elected or nominated before the March 1st, 1985, being the date of commencement of the Constitution (Fifty-second Amendment) Act, 1985.

FORM IV
[See Rule 5(1)]

Name of the Member (in block letters)	1	2	3	4	Name of the State from which elected	Date of election/nomination	Date of taking seat in the Council	Date of commencement of term of Office	Name of political party to which he belongs	Name of legislature party to which he belongs	Remarks
	1	2	3	4		6	7	8	9	10	11