

CHAPTER—3

Membership of Rajya Sabha

Qualifications

Article 84 of the Constitution lays down the qualifications for membership of Parliament. They are similar for membership of both the Houses except in respect of minimum age and representation. A person to be qualified for the membership of the Rajya Sabha should possess the following qualifications:

- (a) he should be a citizen of India and make and subscribe before some person authorised in that behalf by the Election Commission an oath or affirmation according to the following form set out for the purpose in the Third Schedule to the Constitution:

I, A.B. having been nominated as a candidate to fill a seat in the Council of States, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of India as by law established and that I will uphold the sovereignty and integrity of India.¹

The Election Commission has authorised the following persons before whom a candidate for election to the Rajya Sabha may make and subscribe oath or affirmation:

- (i) the returning officer/assistant returning officers concerned;
- (ii) all stipendiary presidency/first class Magistrates;
- (iii) all district judges and other persons belonging to the judicial service of a State;
- (iv) the superintendent of the prison (where a candidate is confined in a prison);
- (v) the commandant of the detention camp (where the candidate is under preventive detention);
- (vi) the medical superintendent of a hospital or medical practitioner concerned (where the candidate is confined to bed or is ill);

- (vii) the diplomatic or consular representative of India or any person authorised by him (where the candidate is out of India); and
 - (viii) any other person nominated by the Election Commission on an application made to it in this behalf (where a candidate is for any other reason unable to appear or prevented from appearing before the concerned returning officer/assistant returning officer).²
- (b) he must not be less than thirty years of age (on the date of scrutiny of nomination).³
 - (c) he must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.⁴

The Representation of the People Act, 1951 (43 of 1951) lays down a further qualification that a person shall not be qualified to be chosen as a representative of any State or Union territory in the Rajya Sabha unless he is an elector for a parliamentary constituency in India.⁵ The Representation of the People Act, 1950 (43 of 1950) lays down conditions of registration in the electoral roll for a constituency, namely, a person should be not less than eighteen years of age on the qualifying date and should be ordinarily resident in a constituency.⁶

Disqualifications

Constitutional provisions

Article 102 of the Constitution which lays down the disqualifications for membership of either House of Parliament reads as follows:

- (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—
 - (a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;
 - (b) if he is of unsound mind and stands so declared by a competent court;
 - (c) if he is an undischarged insolvent;
 - (d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;
 - (e) if he is so disqualified by or under any law made by Parliament.

Explanation—For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State.

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

Expression ‘office of profit’

The expression ‘office of profit under the Government’ occurring in sub-clause (a) of clause (1) of the article 102 has not been defined in the Constitution or any other statute of Parliament. Its scope and ambit have, therefore, to be gathered from the pronouncements of courts and other competent authorities.⁷

“Although certain enactments had been passed by Parliament, keeping in view the provisions of article 102(1)(a), it was widely felt that none of the Acts met comprehensively the needs of the situation. In this background, and following presentations from Members of Parliament, Shri G. V. Mavalankar, Speaker, Lok Sabha, in consultation with the Chairman of the Rajya Sabha appointed, on 21 August 1954, a Committee on Offices of Profit under the Chairmanship of Pt. Thakur Das Bhargava to study various matters connected with disqualification of members and to make recommendations in order to enable the Government to consider the lines along which a comprehensive legislation should be brought before the House; and collect facts, data and make suggestions as to how the matter should be dealt with.

In pursuance of the recommendations of the Bhargava Committee, the Government introduced in the Lok Sabha the Parliament (Prevention of Disqualification) Bill on 5 December 1957. It was referred to a Joint Committee of the Houses and its Report was presented to the Lok Sabha on 10 September 1958. The Bill, as further amended and passed by Parliament, received the assent of the President on 4 April 1959.”⁸

Joint Committee on Offices of Profit

The Joint Committee of Houses of Parliament on Offices of Profit has been set up, *inter alia*, to examine the composition and character of all Committees, membership of which may disqualify a person for being chosen as, and for being, a Member of Parliament under article 102 of the Constitution and which also examines all matters relating to ‘office of profit’. The Committee generally follows the under mentioned criteria for

determining whether an office ought or ought not to disqualify its holder for being elected or continuing as a Member of Parliament:

- (i) whether Government exercises control over the appointment and removal from the office and over the performance and functions of the office;
- (ii) whether the holder draws any remuneration other than the 'compensatory allowance', as defined in Section 2(a) of the Parliament (Prevention of Disqualification) Act, 1959;
- (iii) whether the body in which an office is held, exercises executive, legislative or judicial powers or confers powers of disbursement of funds, allotment of lands, issue of licences, etc. or gives powers of appointment, grant of scholarships, etc.; and
- (iv) whether the body in which an office is held enables the holder to wield influence or power by way of patronage.

If the reply to any of the above criteria is in the affirmative then the holder of office in question incurs disqualification.⁹

Statutory exceptions to office of profit

(i) The Parliament (Prevention of Disqualification) Act, 1959

Even though an office may be an office of profit, its holder is not disqualified if Parliament so declares. The Parliament (Prevention of Disqualification) Act, 1959, lays down which offices do not disqualify holders thereof from the membership of Parliament. The Act was amended in 1993, 1999, 2000, 2006 and 2013. Briefly, the Act provides that if a member/Director of a statutory or non-statutory body/company (excluding those specified in the Schedule to the Act) is not entitled to any remuneration other than the compensatory allowance, he does not incur disqualification. Compensatory allowance has been defined as any sum of money payable to the holder of an office by way of daily allowance not exceeding the daily allowance to which a Member of Parliament is entitled under the Salary, Allowances and Pension of Members of Parliament Act, 1954, any conveyance allowance, house rent allowance or travelling allowance for recouping any expenditure incurred by him in performing the functions of that office. The Act specifically excludes offices held by (a) a Minister, Minister of State or Deputy Minister for the Union or for any State, whether *ex-officio* or by name; (b) Leader of the Opposition in Parliament; (c) Deputy Chairman, Planning Commission; (d) Chief Whip/Deputy Chief Whip or Whip in Parliament or a Parliamentary Secretary; (e) Leader and Deputy Leader of a recognised party and recognised group in either House of Parliament;

(f) Chairpersons of the National Commission for Minorities, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes, National Commission for Women; (g) Member of National Cadet Corps, Territorial Army or Reserve and Auxiliary Air Force or Home Guard; (h) Sheriff of Bombay, Calcutta or Madras; (i) Chairman or Member of the Syndicate, Senate, Executive Committee, Council or Court of a University or any other body connected with a University; (j) Member of any delegation or mission sent outside India by the Government for any special purpose; (k) Chairman or Member of a Committee temporarily set up for advising the Government on a matter of public importance; (l) Chairperson of the National Advisory Council constituted by the Government of India in the Cabinet Secretariat; (m) Chairman, Deputy Chairman, Secretary or Member (by whatever name called) in any statutory or non-statutory body specified in the Table; (n) Chairperson or Trustee (by whatever name called) of any Trust, whether public or private, not being a body specified in the Schedule; (o) Chairman, President, Vice-President or Principal Secretary or Secretary of the Governing Body of any society registered under the Societies Registration Act, 1860 or under any other law relating to registration of societies, not being a body specified in the Schedule; and (p) village revenue officers collecting land revenue and getting share or commission in the collection.

It is competent for Parliament to enact such a law to remove a disqualification with retrospective effect¹⁰ or to exempt any office from the disqualification at its discretion.¹¹

(ii) Other statutes

Besides the offices mentioned above, specific provision by way of a declaratory clause is also made in particular enactments to the effect that offices created thereunder are deemed not to be an 'office of profit', for the purpose of disqualification. Some examples of such declaratory clauses are found in the following Acts:

- (a) The Coffee Act, 1942,¹² the Rubber Act, 1947¹³, the Tea Act, 1953,¹⁴ Tobacco Board Act, 1975,¹⁵ the Spices Board Act, 1986,¹⁶ declare that the office of a member of the Board constituted under respective enactments shall not disqualify its holder for being chosen as, or for being a Member of Parliament.
- (b) The Wakf Act, 1995, declares that the holder of the office of the chairperson or member of a Wakf Board shall not be disqualified and shall be deemed never to have been disqualified, for being chosen as, or for being, a Member of Parliament.¹⁷

- (c) The Press Council Act, 1978, declares that the Office of a Member of the Council set up under that Act shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.¹⁸

Additional statutory disqualifications

While sub-clause (a) of article 102(1) empowers Parliament to declare that certain offices, which are offices of profit, shall not disqualify their holders for membership of Parliament, sub-clause (e) empowers Parliament to provide by law further disqualifications, *i.e.*, other than those specified in sub-clauses (a) to (d). The election law lays down certain further disqualifications. Broadly, these are –

- (i) A person convicted of an offence punishable under certain sections of the Indian Penal Code, 1860, the Protection of Civil Rights Act, 1955, the Customs Act, 1962 (s. 11), the Unlawful Activities (Prevention) Act, 1967 (ss. 10-12), the Foreign Exchange (Regulation) Act, 1973, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Terrorist and Disruptive Activities (Prevention) Act, 1987 (s.3), the Religious Institutions (Prevention of Misuse) Act, 1988 (s. 7), the Representation of the People Act, 1951, [ss. 125, 135, 135A & 136(2)(a)], the Places of Worship (Special Provision) Act, 1991 (s. 6), the Prevention of Insults to National Honour Act, 1971 (ss. 2 & 3), is disqualified for six years from the date of conviction.¹⁹
- (ii) A person convicted and sentenced to imprisonment for not less than six months for contravention of any law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or any provision of the Dowry Prohibition Act, 1961 or the Commission of Sati (Prevention) Act, 1987, is disqualified from the date of such conviction and for a further period of six years since his release.²⁰
- (iii) A person convicted of any offence other than the one mentioned above and sentenced to imprisonment for not less than two years is disqualified from the date of such conviction and for a further period of six years since his release.²¹

If the person so convicted is a Member of Parliament/Legislative Assembly/Legislative Council, the disqualification will take place with effect from the date of such conviction.²² Shri Rasheed Masood, a member representing the State of Uttar Pradesh, consequent upon his conviction in a corruption case by the

Special Judge, CBI Court, was disqualified from the membership of Rajya Sabha w.e.f. 19 September 2013, *i.e.*, the date of his conviction.²³ Similarly, Shri Lalu Prasad and Shri Jagdish Sharma, members of Lok Sabha, consequent upon their conviction by the CBI Court were disqualified from the membership of Lok Sabha w.e.f. 30 September 2013, *i.e.*, the date of their conviction.²⁴ Shri T. M. Selvaganapathi, a member representing the State of Tamil Nadu, consequent upon his conviction in a corruption case by the Special Judge, CBI Court, was disqualified from the membership of Rajya Sabha w.e.f. 17 April 2014, *i.e.*, the date of his conviction.²⁵

- (iv) A person found guilty of a corrupt practice by an order under the relevant provisions of the election law, is disqualified if the President so decides for such period as may be determined by him but not exceeding six years from the date of the Order.²⁶
- (v) A person dismissed from an office under the Government of India or the Government of any State for corruption or for disloyalty is disqualified for five years from the date of dismissal.²⁷
- (vi) A person who has, in the course of his trade or business entered into contract with the Central Government for the supply of goods or for the execution of any works undertaken by that Government is disqualified so long as the contract subsists.²⁸
- (vii) A person who is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the Central Government has not less than twenty-five per cent share is disqualified so long as he is holding that office.²⁹
- (viii) A person who has failed to lodge an account of election expenses within the time and in the manner required without any good reason or justification is disqualified for three years from the date of Election Commission's Order.³⁰

A sitting member of the Rajya Sabha representing the State of Manipur had contested the Lok Sabha election held in 1989. The Election Commission by its Order dated 8 July 1991, issued under section 10A of the Representation of the People Act, 1951 (failure to lodge account of election expenses as a candidate for the Inner Manipur Parliamentary Constituency in the General Election to Lok Sabha, 1989) disqualified, among others, that member, for being chosen as, and for being a member of either House of Parliament or of the Legislature of a State for a period of 3 years from the date of the Order. Subsequently, the

member filed a petition under section 11 of the Act for cancellation or alternatively under section 10A for removal of the disqualification. The Commission by its Order dated 20 September 1991 rejected the petition. The member approached the High Court of Delhi against the Order of the Election Commission. The High Court by its Order dated 18 November, 1991 stayed the operation of the Election Commission's Order. Subsequently, the member withdrew the petition and the original Order of the Commission became operative.³¹

Decision on disqualification

If any question arises whether a Member of Parliament has become subject to any of the disqualifications as also the question of disqualification of a person on ground of corrupt practice at an election to a House of Parliament, including removal or reduction of period of such disqualification, the question is referred for the decision of the President whose decision is final in the matter. However, before giving his decision on such a question, the President is required to obtain the opinion of the Election Commission and act according to such opinion. A question of disqualification of a member to be referred to the President under article 103 should be based on a post-election disqualification, *i.e.*, disqualification incurred by a member after his election to Parliament.³²

Disqualification on ground of defection

Clause (2) was added to article 102 by the Constitution (Fifty-second Amendment) Act, 1985. The Act also added a new Schedule (Tenth Schedule) to the Constitution setting out certain provisions as to disqualification on ground of defection. The Act came into force with effect from 1 March 1985.³³

Under the Tenth Schedule, a member is disqualified for being a member of the House in the following circumstances:

- (i) if he voluntarily gives up his membership of the political party, if any, by which he was set up as a candidate for election as such member; or
- (ii) if he votes or abstains from voting in the House contrary to any direction issued by his political party or by any person or authority authorised by it in this behalf, without prior permission of the party/person/authority, and such voting or abstention has not been condoned by that party/person/authority within fifteen days from the date of voting or abstention;³⁴ or

- (iii) if an elected member of the House who has not been elected as a candidate set up by a political party, joins any political party after his election;³⁵ or
- (iv) if a nominated member joins any political party after the expiry of six months from the date on which he takes his seat (by taking oath or making affirmation);³⁶ if he is already a member of a political party on the date of his nomination, then he is deemed to belong to that party thereafter.³⁷

Exception

The disqualification on ground of defection does not apply in case of merger of a political party.³⁸ However, not less than two-thirds of the members of the legislature party concerned have to agree for such a merger.³⁹

Where the original political party of a member of the House has merged with another political party and the member claims that he and any other member of his original political party, have become members of such other political party or of a new political party formed after such merger, he does not incur the disqualification.⁴⁰ In that case, from the time of such merger, such other political party or new political party or group is deemed to be his political party.⁴¹ However, the merger of the original political party of the member shall be deemed to have taken place if, and only if, not less than two-thirds of the members of the concerned legislature party have agreed to such merger.⁴²

A member who is elected as the Deputy Chairman of the Rajya Sabha is not disqualified if he/she, by reason of the election to such office, voluntarily gives up the membership of the political party to which he/she belonged immediately before such election and thereafter does not, so long as he/she continues to be the Deputy Chairman rejoin that political party or become a member of another political party or if he/she rejoins the party after ceasing to be the Deputy Chairman.⁴³

Decision on disqualification under Tenth Schedule

If any question arises as to whether a member of the House has become subject to disqualification under the Tenth Schedule, the question is referred to the Chairman, Rajya Sabha, and his decision is final.⁴⁴ All proceedings in this regard are deemed to be proceedings in Parliament within the meaning of article 122 of the Constitution⁴⁵ and the jurisdiction of courts in respect of any matter connected with the disqualification of

a member of the House under that Schedule is barred.⁴⁶ However, the Supreme Court has ruled—

The Tenth Schedule does not, in providing for an additional ground for disqualification and for adjudication of disputed disqualifications, seek to create a non-justiciable constitutional area. The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.

Paragraph 6(1) of the Tenth Schedule, to the extent it seeks to impart finality to the decision of the Speakers/Chairmen is valid. But the concept of statutory finality embodied in paragraph 6(1) does not detract from or abrogate judicial review under articles 136, 226 and 227 of the Constitution in so far as infirmities based on violations of constitutional mandates, *mala fide*, non-compliance with rules of natural justice and perversity, are concerned.

The deeming provision in paragraph 6(2) of the Tenth Schedule attracts an immunity analogous to that in articles, 122(1) and 212(1) of the Constitution as understood and explained in 1965(1) SCR 413 to protect the validity of proceedings from mere irregularities of procedure. The deeming provision, having regard to the word “be deemed to be proceedings in Parliament” or “proceedings in the Legislature of a State” confines the scope of the fiction accordingly.

The Speakers/Chairmen while exercising powers and discharging functions under the Tenth Schedule act as Tribunal adjudicating rights and obligations under the Tenth Schedule and their decisions in that capacity are amenable to judicial review.

In view of the limited scope of judicial review that is available on account of the finality clause in paragraph 6 and also having regard to the constitutional intendment and the status of the repository of the adjudicatory power, *i.e.*, Speaker/Chairman, judicial review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman and a *quia timet* action would not be permissible. Nor would interference be permissible at an interlocutory stage of the proceedings. Exception will, however, have to be made in respect of cases where disqualification or suspension is imposed during the pendency of the proceedings and such disqualification or suspension is likely to have grave, immediate and irreversible repercussions and consequences.

It is inappropriate to claim that the determinative jurisdiction of the Speaker or the Chairman in the Tenth Schedule is not a judicial power and is within the non-justiciable legislative area. The fiction in paragraph 6(2), indeed, places it in the first clause of article 122 or 212, as the case may be. The words “proceedings in Parliament” or “proceedings in the Legislature of a State” in paragraph 6(2) have their corresponding expression in articles, 122(1) and 212(1) respectively. This attracts immunity from mere irregularities of procedures. That

apart, even after 1985 when the Tenth Schedule was introduced, the Constitution did not evince any intention to invoke article 122 or 212 in the conduct or resolution of disputes as to the disqualification of members under articles 191(1) and 102(1). The very deeming provision implies that the proceedings of disqualification are, in fact, not before the House; but only before the Speaker as a specially designated authority. The decision under paragraph 6(1) is not the decision of the House, nor is it subject to the approval by the House. The decision operates independently of the House. A deeming provision cannot by its creation transcend its own power. There is, therefore, no immunity under articles 122 and 212 from judicial scrutiny of the decision of the Speaker or Chairman exercising power under paragraph 6(1) of the Tenth Schedule.⁴⁷

Rules framed under the Tenth Schedule

Pursuant to the Tenth Schedule⁴⁸ the Chairman, Rajya Sabha has framed the Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985.⁴⁹ The rules were laid on the Table of the Rajya Sabha on 16 December 1985 and came into force with effect from 18 March 1986 after having been laid on the Table of the Rajya Sabha for a total period of thirty days (4 days during the 136th Session and 26 days during the 137th Session).⁵⁰ They were notified in the Gazette of India Extraordinary and Rajya Sabha Bulletin dated 18 March 1986.⁵¹ The main provisions of the rules are—

Furnishing information and its publication

The Leader of each legislature party is required to furnish to the Chairman a statement containing the names of members of his party and other particulars⁵² within thirty days of the commencement of the rules or where the party is formed after such commencement within thirty days from the date of its formation.⁵³ This applies to a one-member legislature party as well.⁵⁴ The changes in the information already furnished,⁵⁵ condonation or otherwise in regard to voting contrary to direction or abstention from voting are also required to be furnished.⁵⁶ Every member of the House is required to furnish the required information in the prescribed form.⁵⁷ A summary of the information furnished by Members is required to be published in the Rajya Sabha Bulletin.⁵⁸

Reference of question by petition

A reference of any question as to whether a member has become subject to disqualification under the Tenth Schedule is required to be made only by a petition to the Chairman. A petition in relation to a member may be made in writing to the Chairman by any other member. The petition should be in writing, contain concise statement of the material facts, be accompanied by copies of the documentary evidence and be duly verified.⁵⁹

The Orissa High Court, Cuttack, in its judgement dated 27 September, 2012, in Writ Petition (Civil) Nos. 14868, 14869, 14870 and 14871 of 2012 (Utkal Keshari Parida Vs. Speaker, Odisha Legislative Assembly) had ruled that even a non-legislator can initiate disqualification proceedings against a legislator for deserting the party on whose ticket he was elected and joining another political party.

The Speaker, Odisha Legislative Assembly thereafter filed an appeal before the Supreme Court questioning the decision of the Orissa High Court. The Supreme Court in its judgement dated 17 January 2013 in Civil Appeal No. 469 of 2013 (Speaker, Odisha Legislative Assembly Vs. Utkal Keshari Parida) while dismissing the appeal and upholding the judgement of the Orissa High Court in its Order noted that “The Statement of Objects and Reasons of the Bill, which finally became the Constitution (52nd Amendment) Act, 1985, *inter alia*, indicated that the evil of political defection had become a matter of national concern and if it was not checked, it could very well undermine the very foundation of our democracy and the principles which sustain the same. In such event, if the provisions of the Tenth Schedule are interpreted to exclude the right of any person interested to bring to the notice of the Speaker of the House the fact that any or some of its members had incurred disqualification from the membership of the House on any of the eventualities indicated in paragraphs 2 and 4 therein, it would render the inclusion of the Tenth Schedule to the Constitution *otiose* and defeat the objects and intent of the 52nd Amendment of the Constitution.” The Court was also of the view that “Although paragraph 8 of the Tenth Schedule vests the Speaker of the House with powers to make rules for giving effect to the provisions of the Tenth Schedule, the rules framed under such powers would amount to delegated legislation which cannot override the substantive provisions of the Constitution contained in the Schedule itself.”

Procedure for dealing with the question

If the petition does not comply with the rules, it is dismissed. If it complies with the rules, it is forwarded along with its annexures to the member in relation to whom it is made as also to the leader of his legislature party (if the member belongs to any legislature party and the leader himself is not the petitioner) for comments, within the stipulated time.⁶⁰ After considering the comments, the Chairman either decides the question himself or refers it to the Committee of Privileges of the Rajya Sabha for making a preliminary inquiry and submitting a report to him.⁶¹ The House is informed of such reference either by an announcement, if it is in session or through a Bulletin, if it is not in session.⁶²

In a petition received in October 1989, the question was about disqualification of a member for voting contrary to the direction of his political party, on the Constitution (Sixty-fourth and Sixty-fifth Amendment) Bills [regarding Panchayati Raj and Nagarpalikas (municipal bodies)]. The petition was referred to the Committee of Privileges for a preliminary inquiry and report.⁶³ While the matter was pending before the Committee, the member as well as the petitioner retired from the membership of the Rajya Sabha. The member, however, was re-elected. A view was taken by the Chairman that the cause of action did not survive after the member, in respect of whom the petition was made, had ceased to be a member of the House. It was observed *inter alia*—

Unlike disqualification from holding office under section 8A of the Representation of the People Act, 1951, on the ground of corrupt practice, which could extend to a period of six years, the disqualification under the Anti-defection Law does not operate beyond the term of the member of the House. In other words, the disqualification under the Anti-defection Law is instant and does not survive after a member ceases to be a member of the House. In view of the above, the petition has become infructuous. Moreover, even if the Committee were to embark upon its inquiry into the matter, it would have no effect since the member had already retired. It would be an exercise in futility.

The Chairman, therefore, directed that the Committee need not proceed with the reference and it should be deemed to have become infructuous by change of circumstances.⁶⁴

After the receipt of the Report, the Chairman proceeds to determine the question in the same manner as he determines any question of breach of privilege of the House by a member. Before coming to any finding that a member has become subject to disqualification under the Tenth Schedule, the Committee and the Chairman have to give that member a reasonable opportunity to represent his case and to be heard in person.⁶⁵

Thereafter, the Chairman by an order in writing either dismisses the petition or declares that the member has become subject to disqualification and causes copies of the order to be delivered or forwarded to the petitioner, the concerned member and the leader of the legislature party, if any. If the order declares a member disqualified then it is also reported to the House, published in the Bulletin Part-II, notified in the Gazette and forwarded to the Election Commission and the Central Government.⁶⁶

Election

General procedure

The representatives of each State and of the two Union territories in the Rajya Sabha are elected by the elected members of the Legislative

Assembly of the State and by the members of the electoral college for that territory, as the case may be, in accordance with the system of proportional representation by means of the single transferable vote.⁶⁷ Votes are given by open ballot.⁶⁸ As already stated,⁶⁹ the electoral college for the National Capital Territory of Delhi consists of the elected members of the Legislative Assembly of Delhi, and that for Puducherry consists of the elected members of the Puducherry Legislative Assembly. If a person who is a member of an electoral college becomes subject to any disqualification for membership of Parliament under any law relating to corrupt and illegal practice and other offence in connection with elections to Parliament, he ceases, thereupon, to be such member of the electoral college.⁷⁰ No election by the members of an electoral college can be called in question on the ground merely of the existence of any vacancy in the membership of such college.⁷¹

The election held every second year to elect new members to replace those retiring is called 'Biennial Election'. The election held to fill a vacancy arising otherwise than by retirement of a member on the expiration of his term of office is called 'Bye-election'.

For the purpose of filling the seats of members of the Rajya Sabha retiring on the expiration of their term of office, the President, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, calls upon the elected members of the Legislative Assembly of each State or members of the electoral college of each Union territory as the case may be, to elect members of the Rajya Sabha in accordance with the Representation of the People Act, 1951 and the rules and orders made thereunder. No such notification can be issued more than three months prior to the date on which the term of office of the retiring member is due to expire.⁷² For conducting an election to fill a seat or seats in the Rajya Sabha, the Election Commission, in consultation with the Government of the State appoints a returning officer/assistant returning officer. Generally, the Secretaries/officials of the State Legislatures are appointed as returning officer/assistant returning officer for election to the Rajya Sabha.

The Supreme Court had an occasion to deal with the appointment of a person who worked as an officer of the Legislature of a State as the returning officer for election to the Rajya Sabha. The Court observed:

Even though he belongs under article 187 of the Constitution to the staff of the State Legislature, he is still an officer of Government in the broad sense in which the expression 'Government' is used in article 102(1)(a) and article 191(1)(a) of the Constitution. If the expression 'Government' used here is construed as meaning the Executive Government only, then it would defeat the very purpose of these provisions of the Constitution. Similarly, he has to be treated as an officer of Government for purposes of section 21 of the Act

(Representation of the People Act) also qualified for being appointed as the returning officer for an election held under the Act. It is not disputed that after the commencement of the Constitution, the Secretaries of the State Legislatures almost as a matter of rule are being appointed as returning officers for election to the Rajya Sabha... and Parliament has not thought it fit to amend suitably section 21 of the Act expressly including the officers of the State Legislatures amongst the persons qualified to be appointed as returning officer even though it has amended that section once by specifically including officers of local authorities. Parliament all along has treated the Secretaries of the State Legislatures as officers of Government for purposes of section 21 and has found it convenient to do so having regard to the nature of the work to be carried out by them... We are of the view that the work 'Government' in article 102(1)(a) and in article 191(1)(a) of the Constitution and the word 'Government' in the expression 'an officer of Government' in section 21 of the Act should be interpreted liberally so as to include within its scope the Legislature, the Executive and the Judiciary.⁷³

The returning officer with the previous approval of the Election Commission fixes the place at which the poll is to be taken for such election and notifies the place so fixed. The returning officer presides over such election at the place so fixed and appoints polling officer(s) to assist him.⁷⁴

As soon as a notification as mentioned above, is issued, the Election Commission, by a notification in the Gazette appoints:

- (a) the last date for making nominations, which is the seventh day after the publication of the first mentioned notification; if that day is a public holiday, the next succeeding day, which is not a public holiday;
- (b) the date for the scrutiny of nominations, which is the day immediately following the last date for making nominations; if that day is a public holiday, the next succeeding day which is not a public holiday;
- (c) the last day for the withdrawal of candidatures, which is the second day after the date for the scrutiny of nominations; if that day is a public holiday, the next succeeding day which is not a public holiday;
- (d) the date(s) on which a poll shall, if necessary be taken, which or the first of which is a date not earlier than the seventh day after the last date for the withdrawal of candidatures; and
- (e) the date before which the election is to be completed.⁷⁵

Upon the issue of the above-mentioned notification, the returning officer, by a public notice, invites nominations of candidate for such election and also specifies the place at which nomination papers are to be delivered.⁷⁶ Any person may be nominated as a candidate if he is qualified to be chosen to fill the seat under the provisions of the Constitution and the R.P. Act, 1951 or the Government of Union Territories Act, 1963, as the case may be.⁷⁷

On or before the date appointed as above (except on a public holiday), a candidate has, either in person or by his proposer, between 11.00 a.m. and 3.00 p.m., to deliver to the returning officer, a nomination paper, completed in Form 2C appended to the Conduct of Elections Rules, 1961. The Form is required to be signed by the candidates and by ten per cent of the elected members of the Legislative Assembly of a State or of the members of the electoral college of a Union territory, as the case may be, or ten members of concerned, whichever is less, as proposers provided that a person shall not be nominated as a candidate for filling more than two seats.⁷⁸ If, as a result of the calculation of this percentage, the number of members arrived at is a fraction which is more than one-half, it is to be counted as one, and if it is less than one-half it is to be ignored.⁷⁹ The electoral roll for the Rajya Sabha elections is the list of elected members of the Legislative Assembly of the State—members of the electoral college, maintained by the returning officer in the prescribed form.⁸⁰

The Supreme Court had an occasion to consider a question whether the making of oath/affirmation is a condition precedent for being eligible to act as a proposer of a valid nomination for election to the Rajya Sabha. The Court held that an elected member who has not taken oath but whose name appears in the notification published under section 73 of the Representation of the People Act, 1951 can take part in all non-legislative activities of an elected member. The right of voting at an election to the Rajya Sabha can also be exercised by him. As observed by the Court:

The rule contained in article 193 of the Constitution... is that a member elected to a Legislative Assembly cannot sit and vote in the House before making oath or affirmation. The words 'sitting and voting' in article 193 of the Constitution imply the summoning of the House under article 174 of the Constitution by the Governor to meet at such time and place as he thinks fit and the holding of the meeting of the House pursuant to the said summons or an adjourned meeting. An elected member incurs the penalty for contravening article 193 of the Constitution only when he sits and votes at such meeting of the House. Invariably there is an interval of time between the constitution of a House after a general election as provided by section 73 of the Act and the summoning of the first meeting of the House. During that interval an elected member of the Assembly whose name appears in

the notification issued under section 73 of the Act is entitled to all the privileges, salaries and allowances of a member of the Legislative Assembly, one of them being the right to function as an elector in an election held for filling a seat in the Rajya Sabha. That is the effect of section 73 of the Act which says that on the publication of notification under it the House shall be deemed to have been constituted. The election in question does not form a part of the legislative proceedings of the House carried on at its meeting. Nor the vote cast at such an election is a vote given in the House on any issue arising before the House. The Speaker has no control over the election ... All the steps taken in the course of the election thus fall outside the proceedings that take place at a meeting of the House.⁸¹

As already stated a candidate for election has to make and subscribe the oath or affirmation according to the form provided in the Third Schedule to the Constitution. Such oath or affirmation is to be made or subscribed by the candidate after he is nominated but before the date of scrutiny of nomination papers. The candidate who fails to do so becomes disqualified to be chosen.⁸² However, a mere misprint in the form of the oath or a mere inaccuracy in rendering an expression in a regional language is not fatal to the election of a candidate, if otherwise valid.⁸³ A candidate for election to the Rajya Sabha is required to deposit a sum of rupees ten thousand (or rupees five thousand in the case of a SC/ST candidate)⁸⁴ by depositing it with the returning officer in cash or in the Reserve Bank of India or a Government Treasury.⁸⁵ The maximum of four nomination papers can only be presented in respect of one candidate and only one deposit is required to be made for that candidate.⁸⁶

The returning officer examines the nomination papers and decides on their validity or otherwise. The grounds on which a nomination paper is liable to be rejected are that on the date of scrutiny the candidate is not qualified or is disqualified for being chosen to fill the seat under articles 84 and 102 of the Constitution or Part-II of the Representation of the People Act, 1951 or section 4 of the Government of Union Territories Act, 1963, or his nomination paper is not in accordance with the Representation of the People Act, 1951 or he has not made the required deposit or his proposer's signature on the nomination paper is not genuine.⁸⁷ The returning officer cannot, however, reject a nomination paper, on the ground of any defect which is not of a substantial character.⁸⁸

A candidate may withdraw his candidature by a notice in writing signed by him and delivered to the returning officer before 3.00 p.m. on the day fixed for withdrawal either by himself personally or by his proposer or his duly authorised election agent.⁸⁹ Notice of withdrawal is not allowed to be cancelled.⁹⁰ Immediately after expiry of time of withdrawal, the

returning officer prepares and publishes a list of validly nominated candidates in an alphabetical order.⁹¹

If the number of contesting candidates is equal to the number of seats to be filled, the returning officer forthwith declares all such candidates to be duly elected to fill those seats. If the number of such candidates is more than the number of seats to be filled, a poll is taken⁹² during the hours fixed by the Election Commission.⁹³ After a poll is taken, votes are counted⁹⁴ and the returning officer declares the result of the election.⁹⁵ As soon as may be after the result of an election has been declared, the returning officer reports the result to the Secretary-General, Rajya Sabha and the Election Commission.⁹⁶ The Ministry of Law and Justice then publishes in the Gazette of India the declaration containing the names of the elected candidates.⁹⁷ The date on which a candidate is declared elected is the date of election of that candidate.⁹⁸ After a candidate is declared elected the returning officer grants him a certificate of election in Form 24 of the Conduct of Elections Rules, 1961 and obtains from the candidate an acknowledgement of its receipt duly signed by him. He sends the acknowledgement by registered post to the Secretary-General of the Rajya Sabha.⁹⁹

After the elections are held in any year in pursuance of the notification issued under section 12 of the Representation of the People Act, 1951, the Ministry of Law notifies in the Gazette of India the names of members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges of the Union territories of Delhi and Puducherry at the said elections together with the names of persons, if any, nominated by the President under article 80(1)(a) of the Constitution.¹⁰⁰

When before the expiration of the term of office of a member of the Rajya Sabha, his/her seat becomes vacant or is declared vacant or election is declared void, the Election Commission, by a notification calls upon the elected members of the Legislative Assembly/members of the electoral college concerned to elect a person to fill the casual vacancy. The bye-election is required to be held within six months of the occurrence of the vacancy. However, this will not apply if (i) the remainder of the term of a member in relation to a vacancy is less than one year or (ii) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within that period.¹⁰¹

An election can be called in question by an election petition presented on one or more of the grounds specified in the Representation of the People Act, 1951¹⁰² by any candidate at such election or any elector within forty-five days from the date of the election of the returned candidate.¹⁰³

Single transferable vote procedure

The system of election of members of the Rajya Sabha is by proportional representation by means of the single transferable vote. The general principles of this mode of election may be summed up thus:

The single vote is transferable from one nominee to another and that takes place in two contingencies where there would otherwise be a wastage of votes. They are:

- (i) when a candidate obtains more than what is required for his success and therefore has an unnecessary surplus; and
- (ii) when a candidate polls so few votes that he has absolutely no chance and therefore the votes nominating him are liable to be wasted.¹⁰⁴

Rules 71-85 contained in Part VII of the Conduct of Elections Rules, 1961 and the Schedule thereto are formulated on the above-mentioned principles.

Under the scheme and system envisaged by these rules, each elector has only one vote, irrespective of the number of seats to be filled. But that single vote is transferable from one candidate to another. The ballot paper bears the names of the candidates, and the elector marks on it his preferences for the candidates with the figures 1, 2, 3, 4 and so on against the names chosen by him and this marking is understood to be alternative in the order indicated. The figure 1 set by the elector opposite the name of a candidate means "first preference"; the figure 2 set opposite the name of a candidate, the "second preference" and so on.¹⁰⁵

The minimum number of valid votes required to secure the return of a candidate at the election is called the quota. At an election where only one seat is to be filled, every ballot paper is deemed to be of the value of one at each count and the quota is determined by adding the values credited to all the candidates and dividing the total by two and adding one to the quotient, ignoring the remainder, if any, and the resulting number is the quota.¹⁰⁶

At an election where more than one seat are to be filled, every ballot paper is deemed to be of the value of one hundred and the quota is determined by adding the values credited to all the candidates and dividing the total by a number which exceeds by one the number of vacancies to be filled and adding one to the quotient ignoring the remainder, if any, and the resulting number is the quota.¹⁰⁷ For example, assuming that there are

seven members to be elected, sixteen candidates and one hundred and forty electors whose ballot papers are valid, the quota will be:

$$\frac{140 \times 100}{7+1} = \text{quotient} + 1 = \text{Quota}; \quad \text{or} \quad \frac{14000}{8} = 1750+1=1751 \text{ (Quota)}^{108}$$

The computation in the preliminary process is as under:

The returning officer first deals with the covers containing the postal ballot papers, and then opens the ballot boxes, counts the ballot papers and sorts out and rejects the ballot papers found invalid. A ballot paper is deemed invalid on which—

- (a) the figure 1 is not marked; or
- (b) the figure 1 is set opposite the names of more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply; or
- (c) the figure 1 and some other figures are set opposite the name of the same candidate; or
- (d) there is any mark or writing by which the elector can be identified.¹⁰⁹

After rejecting the invalid papers, the returning officer (a) arranges the remaining ballot papers in parcels according to the first preference recorded for each candidate; (b) counts and records the number of papers in each parcel and the total number; and (c) credits to each candidate the value of the papers in his parcel. He then determines the quota as mentioned above.

If at the end of any count the value of ballot papers credited to a candidate is equal to, or greater than the quota, that candidate is declared elected.¹¹⁰

If the value of the ballot papers credited to a candidate is greater than the quota, the “surplus” is transferred to the “continuing candidates” indicated in the ballot papers of that candidate as being next in order of the elector’s preference.¹¹¹ “Surplus” means the number by which the value of the votes, original and transferred, of any candidate exceeds the quota. “Continuing candidate” means any candidate not elected and not excluded from the poll at any given time.¹¹² If more than one candidate have a surplus, the largest surplus is dealt with first and the others in order of magnitude, but every surplus arising on the first count is dealt with before the one arising on the second count and so on. Where there are more surpluses than one to distribute and two or more surpluses are equal,

regard shall be had to the “original votes” of each candidate and the candidate for whom most original votes are recorded has his surplus first distributed; and if the values of their original votes are equal, the returning officer decides by lot which candidate shall have his surplus first distributed.¹¹³ “Original vote”, in relation to any candidate, means a vote derived from a ballot paper on which a first preference is recorded for such candidate.¹¹⁴

If the surplus of any candidate to be transferred arises from original votes only, the returning officer examines all the papers in the parcel belonging to that candidate, divides the “unexhausted papers” into sub-parcels according to the next preferences recorded thereon and makes a separate sub-parcel of the exhausted papers.¹¹⁵ “Exhausted paper” means a ballot paper on which no further preference is recorded for a continuing candidate, provided that a paper shall be deemed to have become exhausted whenever—(a) the names of two or more candidates, whether continuing or not, are marked with the same figure and are next in order of preference; or (b) the name of the candidate next in order of preference, whether continuing or not, is marked by a figure not falling consecutively after some other figure on the ballot paper or by two or more figures.¹¹⁶ The returning officer has to ascertain the value of the papers in each sub-parcel and of all the unexhausted papers. If the value of the unexhausted papers is equal or less than the surplus, he transfers all the unexhausted papers at the value at which they were received by the candidate whose surplus is being transferred. If the value of the unexhausted papers is greater than the surplus, he transfers the sub-parcels of unexhausted papers at a reduced value which is ascertained by dividing the surplus by the total number of unexhausted papers.¹¹⁷ The returning officer has to transfer the surplus arising from transferred as well as original votes according to the prescribed procedure.¹¹⁸

If after transfer of all surpluses the number of candidates elected is less than the required number, the returning officer excludes the candidate lowest on the poll and distributes his unexhausted papers among the continuing candidates according to the next preferences recorded thereon.¹¹⁹ The papers containing original votes of an excluded candidate are first transferred, at the value of one hundred.¹²⁰ The papers containing transferred votes of an excluded candidate are then transferred in the order of the transfers in which, and at the value at which, he has obtained them.¹²¹ If, as a result of the transfer of papers, the value of votes obtained by a candidate is equal to or greater than the quota, the count then is completed without any further transfer.¹²² The process is repeated on the successive exclusion one after another of the candidates lowest on the poll until such vacancy is filled by the election of a candidate with the quota.¹²³ When the

number of continuing candidates is reduced to the number of vacancies remaining unfilled, the continuing candidates are declared elected.¹²⁴ When only one vacancy remains unfilled and the value of the papers of some one candidate exceeds the total value of the papers of all the other continuing candidates together with any surplus not transferred, that candidate is declared elected.¹²⁵ When only one vacancy remains unfilled and there are only two continuing candidates and each of them has the same value of votes and no surplus remains capable of transfer, the returning officer decides by lot which of them shall be excluded; and after excluding him declares the other candidate elected.¹²⁶

Nominations

Besides the two hundred and thirty-eight representatives of the States and of the Union territories, the Rajya Sabha consists of twelve members nominated by the President who have special knowledge or practical experience in respect of such matters as literature, science, art and social service.¹²⁷ Under the Allocation of Business Rules, 1961, the subject “Nominations to the Rajya Sabha” is allocated to the Ministry of Home Affairs which is the administrative Ministry for initiating the process of nominations. After a nomination is made by the President, that Ministry notifies the same.

On 19 December 2012, the High Court of Delhi dealt with a Public Interest Litigation (PIL) in Ram Gopal Singh Sisodia Vs. Union of India through its Secretary & Ors., challenging the nomination of Shri Sachin Ramesh Tendulkar as a member of Rajya Sabha. The Hon’ble Court examined the scope of article 80(3) of the Constitution which reads, ‘The members to be nominated by the President under sub-clause(a) of clause(1) shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely: literature, science, art and social service’. The Court in its judgement upheld the nomination of Shri Sachin Ramesh Tendulkar under clause 3 of article 80 of the Constitution. It *inter alia* stated that the use of the words in article 80(3) ‘in respect of such matters as the following’ is also indicative of the matters mentioned thereafter, viz., literature, science, art and social service, which are illustrative and not exhaustive. It also cited certain cases in which the Hon’ble Supreme Court of India has held that the words “such as” indicate that what are mentioned thereafter are only illustrative and not exhaustive.

The High Court while dismissing the petition observed that the framers of the Constitution of India, by adopting the principle of nomination in Rajya Sabha, ensured that the nation receives the services of the most distinguished persons of the country who have earned distinction in their field of activity. By nominating them to the Rajya Sabha, the State enables them to enrich the debates by their expertise and knowledge that they have in different areas.¹²⁸

In the case of a casual vacancy in the seat of a nominated member, the term of office of the member nominated to fill that seat commences from the date of notification issued under sub-clause (a) of clause (1) of article 80 of the Constitution.¹²⁹ That member serves for the remainder of his predecessor's term of office.

The Ministry of Law had an occasion to consider a question whether there could be a casual vacancy in the seat of a nominated member. The Ministry opined:

The scheme of article 83 of the Constitution as also of section 154 (2) of the 1951 Act and the President's Order (regarding nomination) clearly suggests that elected and nominated members should be treated alike for the purpose of ensuring that one-third members of the Council of States retire on the expiration of every second year... A plain reading of the aforesaid provisions [section 154 (1) & (3)] indicates that the term of office of an elected or nominated member of the Council of States is six years and that a casual vacancy could occur in the seat of a nominated or elected member of the Council of States.

There is no basis either in article 83 of the Constitution or in any provision of the 1951 Act for holding that a nominated member chosen to fill a casual vacancy shall hold office for a term of six years.

Under the Constitution, a casual vacancy can arise when a member's seat becomes vacant or is declared vacant or his election is declared void.

The practice hitherto followed also appears to suggest that a vacancy arising in the seat of a nominated member before the completion of that member's regular term has been treated as a casual vacancy.¹³⁰

The term of office of a member other than a member chosen to fill a casual vacancy is six years.¹³¹ After the President has nominated a person to fill the vacancy caused by the retirement of a member, the same is notified by the Ministry of Law under section 71 of the Representation of the People Act, 1951 and the term of such a member commences from that date even though the date of notification of nomination of persons issued by the Ministry of Home Affairs precedes the notification issued by the Ministry of Law under section 71 of that Act.

Between 1952 and 2014, 124 persons have been nominated to the Rajya Sabha. The nominated members enjoy all the powers, privileges and immunities available to other elected members. However, they are not eligible to vote in the election of the President since the President is elected by the members of an electoral college consisting of the elected

members of Parliament and elected members of the Legislative Assemblies of the States (which include the National Capital Territory of Delhi and the Union territory of Puducherry).¹³² No such restriction exists in the Vice-President's election, since the electoral college for that election consists of the members of both Houses of Parliament.¹³³ At the same time it may be mentioned that at the Centre no nominated member has yet been included in the Council of Ministers, though there is no bar against such inclusion under the Constitution.

Prof. S. Nurul Hasan was nominated to the Rajya Sabha in 1968. He resigned his seat in the Rajya Sabha on 30 September 1971. He was inducted in the Union Council of Ministers on 4 October 1971. Subsequently, he was elected to the Rajya Sabha from the State of Uttar Pradesh on 11 November 1971.

There have been instances of the nominated members of being appointed Chairmen of the Committees.¹³⁴ Under the Tenth Schedule, a nominated member is 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.¹³⁵

Appellation M.P.

Members of the Rajya Sabha like members of the Lok Sabha also use the appellation or abbreviation "M.P." (Member of Parliament) after their names.

For some time in the beginning in 1952, members of the Council of States were affixing "M.C." to their names. On 16 May 1952, which was the fourth sitting of the Council of States, a member asked the Chairman what the Members of the Council of States would be called. The Chairman informed him that the matter was under discussion.¹³⁶ Meanwhile on 6 June 1952, the Speaker, House of the People, announced that he had appointed a Joint Committee on Payment of Salary and Allowances to Members of Parliament¹³⁷ and by another announcement on 20 June 1952, he stated that the Committee would also consider and report to Parliament what abbreviations should be used for members of the House of the People and of the Council of States. As stated by him:

A mild dissatisfaction was expressed that some of the members of the Council of States did not like the appellation "M.C." and that point will have to be considered as both the Houses together form the Parliament. That is why a reference is made. So, the Committee would make its recommendation.¹³⁸

The question of abbreviations to be used for members of either House was considered by the Joint Committee at its sitting held on 28 June 1952. At the meeting different viewpoints were expressed about the exact designation by which members of either House of Parliament might be called. For instance, one member favoured the use of M.Ps. for members of the House of the People and “Councillors” for those of the Council of States. Another member was of the opinion that members of both the Houses might be called M.Ps. but for purposes of parliamentary business, members of the House of the People might be called M.P.(H) and those of the Council of States M.P.(C). Yet another member preferred the nomenclature M.Ps. for members of the House of the People and “Senators” or “Councillors” for those of the Council of States.¹³⁹

At the meeting held on 15 July 1952, the Committee decided that members of both the Houses should be called Members of Parliament or M.Ps.¹⁴⁰

The Committee in its Report presented to the House of the People on 5 August 1952 recommended accordingly.¹⁴¹

Term of office

The Rajya Sabha is not subject to dissolution, but as nearly as possible one-third of the members thereof retire on the expiration of every second year in accordance with the provisions made in that behalf under the Representation of the People Act, 1951.¹⁴² The term of office of a member (both elected and nominated) is six years.¹⁴³ However, a member elected/nominated to fill a casual vacancy holds office for the remainder of the term of his predecessor.¹⁴⁴ The term of office of a member begins (i) in case of a member elected/nominated biennially (*i.e.*, on the expiration of every second year) from the date on which his name is notified by the Government of India in the Gazette,¹⁴⁵ (ii) in the case of a member elected/nominated to fill a casual vacancy, from the date of publication in the Official Gazette of the declaration of his election or of the notification of his nomination, as the case may be.¹⁴⁶

Initial fixation

The Rajya Sabha was first constituted on 3 April 1952, on the basis of the seats assigned to various States as shown in the then Fourth Schedule to the Constitution.¹⁴⁷ It consisted of 216 members—12 nominated by the President and the remaining 204 elected to represent States. Under section 154(2) of the Representation of the People Act, 1951, as it stood then, the President, after consultation with the Election Commission made an Order known as the ‘Council of States (Term of Office of Members) Order, 1952’¹⁴⁸

for curtailing the term of office of some of the members then chosen in order that as nearly as one-third of the members holding seats of each class would retire in every second year. That order provided that the term of office of a member would expire on 2 April 1958; 2 April 1956 and 2 April 1954; accordingly members would be placed in the first, second or third category.

The elected members were grouped State-wise (except Bhopal, Bilaspur-cum-Himachal Pradesh, Delhi and Kutch which were grouped into one). Likewise twelve nominated members were also divided into three categories. The members to be placed in each category were determined by the Election Commission by drawing of lots in public on 29 November 1952.¹⁴⁹

As a result of the categorisation and draw of lots, 72 members were placed in the first category *i.e.*, retiring in 1958, 71 each in the second and the third categories *i.e.*, retiring in 1956 and 1954, respectively. The term of office of the two representatives from the Ajmer-Coorg and the Tripura-Manipur groups was already fixed for two years and they were, therefore, not included in the categorisation or draw of lot.¹⁵⁰ A statement showing the terms of office of members as determined was published in the Gazette of India Extraordinary.¹⁵¹ Thus, by the above process, it was ensured that as nearly as possible, one-third of the members of the Rajya Sabha would retire on the second day of April, every second year and would be replaced by new members elected in their places.

Subsequent modifications

The terms so fixed as above, were, however, modified subsequently in respect of some members due to formation or reorganisation of States. The same procedure as above was, more or less followed for the purpose. Whenever addition of seats or transfer of seats took place due to reorganisation, specific provisions were inserted in the law for fixing the term of the members elected at the election.

Under the Andhra State Act, 1953, the term of office of one member was increased so as to expire on 2 April 1958, and that of another member was reduced so as to expire on 2 April 1954.¹⁵² This was done by draw of lot held by the Secretary, Rajya Sabha, as stipulated in that Act.¹⁵³

Under the States Reorganisation (Council of States) (Term of Office of Members) Order, 1956,¹⁵⁴ made under the States Reorganisation Act, 1956,¹⁵⁵ in order that, as nearly as may be, one-third of the members retired on the second day of April, 1958, and on the expiration of

every second year thereafter, the term of office of three members from Bombay was reduced from 1962 to 1960 and of four other members from 1960 to 1958; the term of office of one member from Kerala was reduced from 1962 to 1960 and of another member from 1960 to 1958; the term of office of one member from Madhya Pradesh was increased from 1958 to 1960 and of two other members from 1960 to 1962; the term of office of one member each from Madras and Mysore was increased from 1958 to 1960.¹⁵⁶ The term of office of three members from Uttar Pradesh was determined so as to expire in 1962, 1960 and 1958 and that of two members from Delhi so as to expire in 1960 and 1958.¹⁵⁷ All this was done by the Election Commission by holding draw of lots.

The Bombay Reorganisation Act, 1960, provided that the term of office of one additional seat allotted to Maharashtra would expire on 2 April 1966. So far as two additional seats allotted to Gujarat were concerned, the Act provided that “the term of office of that member, who, at the counting of votes is last declared elected, or if an equality of votes is found to exist, the term of office of such one of them as the returning officer shall declare by lot, shall expire on 2 April 1964 and the term of office of the other member shall expire on 2 April 1966.”¹⁵⁸

The Punjab Reorganisation Act, 1966, provided that the term of office of one of the two members elected to fill the vacancies existing in the seats allotted to Haryana would expire on 2 April 1968 and that of the other member would expire on 2 April 1972. This was determined by draw of lots by the Chairman, Rajya Sabha.¹⁵⁹

Section 8 of the State of Nagaland Act, 1962, itself provided that the term of office of a member for the first time elected to fill the seat allotted to Nagaland would expire on 2 April 1968. Under section 12 of the North-Eastern Areas Reorganisation Act, 1971, a seat was allotted to Meghalaya in the Rajya Sabha. The Act did not lay down the term of office of that member, when elected. The President, therefore, issued the North-Eastern Areas Reorganisation (Removal of Difficulties) Order No. 1 under section 87 of the Act, enabling the Election Commission to fill the seat by treating it as a casual vacancy under section 147 of the Representation of the People Act, 1951. The election of that member was notified under section 67 of that Act on 13 April 1972 and his term commenced from that day and continued till 12 April 1978.

The Goa, Daman and Diu Reorganisation Act, 1987, under which a seat was allotted to the new State of Goa in the Rajya Sabha also did not contain any provision regarding the term of office of the member who would be elected. Neither section 12 (biennial election) nor section 147 (bye-election) of the Representation of the People Act, 1951 covered the Goa seat. The President, therefore, issued on 12 June 1987, the

Goa, Daman and Diu Reorganisation (Removal of Difficulties) Order No. 1 clarifying that the seat would be filled as if it were a casual vacancy through a bye-election. The notification of the member elected was issued under section 67 of the Representation of the People Act, 1951, on 8 July 1987 and the member elected served till 7 July 1993.¹⁶⁰

Three new States, *i.e.*, Chhattisgarh, Uttaranchal and Jharkhand were carved out from the States of Madhya Pradesh, Uttar Pradesh and Bihar, respectively, in 2000. Provisions were made in the respective State Reorganisation Acts about the members who shall be deemed to be members representing the newly created States from the existing States except in the case of members retiring in 2004 and 2006 from the newly created State of Uttaranchal. A proviso was made in the Uttar Pradesh Reorganisation Act, 2000, that the Chairman, Rajya Sabha may hold a draw of lots to determine one member each from amongst the members from Uttar Pradesh, retiring in 2004 and 2006, respectively, who shall be deemed to have been elected for two seats allotted to the State of Uttaranchal. Accordingly, a draw of lots was held by the Chairman, Rajya Sabha in his Chamber in Parliament House on 2 November 2000.

A new State, *i.e.*, Telangana was carved out from the State of Andhra Pradesh in 2014. Provisions were made in the Andhra Pradesh Reorganisation Act, 2014 about the members who shall be deemed to be members representing the newly created State of Telangana from the existing Andhra Pradesh State. A provision was made in the Andhra Pradesh Reorganisation Act, 2014 that the Chairman, Rajya Sabha may hold a draw of lots to determine the seven members from amongst the members from the State of Andhra Pradesh who shall be deemed to have been elected to fill the seven seats allotted to the State of Telangana. Accordingly, a draw of lots was held by the Chairman, Rajya Sabha in his Chamber in Parliament House on 30 May 2014.

The cycle of retirement of, as nearly as possible, one-third members has been disturbed and changes in the dates of retirement have been necessitated since 1968, by reason of dissolution of assemblies and holding of mid-term elections and accordingly terms of members commenced after the elections were held. This has led to anomalous position flowing from the legal provisions of sections 154 and 155 of the Representation of the People Act, 1951, as applied to cases of vacancies which cannot be filled on due dates and which disturb the cycle of retirement of one-third members every second year.

In this context, the cases of members from Delhi and Punjab are worthy of mention. Delhi has got three members in the Rajya Sabha. Two vacancies in the Rajya Sabha from Delhi arose due to retirement of members on 15 April 1980 and on 2 April 1982. These vacancies could not be filled

as the then Delhi Metropolitan Council whose members constituted the electoral college for this election continued to be dissolved till 7 February 1983. After it was reconstituted on 8 February 1983, two separate biennial elections were held with a common programme and the term of office of both the members commenced on 21 November 1983 and both the members retired on 20 November 1989. A third vacancy arose due to the retirement of the remaining member on 2 April 1990. Biennial elections to all the three seats could be held only after the formation of the Delhi Legislative Assembly. They were held as three separate elections (since original vacancies had arisen on different dates) with a common programme. The term of office of all the three members commenced on 28 January 1994 and expired on 27 January 2000. In other words, the term of office of all the three members representing the National Capital Territory of Delhi expired simultaneously on one date.

As regards Punjab, the Rajya Sabha has five members representing that State. Three members retired on 2 April 1988 and two others on 9 April 1990. In view of the dissolution of the State Assembly, elections could not be held there. After the Legislative Assembly was duly constituted after elections, two sets of vacancies were notified with reference to the dates on which the vacancies arose, with a common programme of election to fill both the sets of vacancies. The term of office of all the five members was for six years commencing on 10 April 1992 (and not for the remaining period of original vacancies) and all the five members retired simultaneously on 9 April 1998.

In order to overcome such situations, the Election Commission recommended that the law should be amended in such a manner that if the elections were not held on the due date by virtue of non-existence of the electoral college or otherwise, the member to be elected later should serve only for the remainder of the six years' period and not for the full period of six years as now allowed under the law. The Commission was of the view that minor amendments in sections 154 and 155 of the Representation of the People Act, 1951, would set right the anomalous position of more than one third of members retiring on the same day.¹⁶¹ However, the Goswami Committee felt that it was not necessary to amend the law to provide for one single day of retirement in all cases. Such a course, the Committee felt, would "unnecessarily curtail and interfere with" the term of members of the Rajya Sabha.¹⁶²

On an occasion, a member pointed out that three members of Kerala were retiring on 2 April 1966 and due to non-functioning of Kerala Legislative Assembly there would be no elections there (Kerala was brought under the President's Rule on 24 March 1965 and it continued

till 6 March 1967). He, therefore, suggested that the Constitution should be amended to provide that till the new members were elected the sitting Members might be allowed to continue. The Minister of State in the Ministry of Home Affairs, in reply, stated that if there was any provision in the Constitution whereby it could be possible, certainly Government would see to it, consider what the constitutional position was or should be.¹⁶³

The position in respect of nominated members is also similar in as much as due to delay in or deferment of nominations beyond the date of expiration of the term of office of some members, the cycle of retirement of nominated members has also been broken, as may be seen from the following instances:

Four nominated members retired on 2 April 1978. In their places equal number of members were nominated on 14 April 1978, who retired on 13 April 1984 and in their places three members were nominated on 9 May 1984 and the fourth one was nominated on 3 January 1985; in the places of those who retired on 8 May 1990, nominations were made for one on 28 May 1990 and for two on 18 September 1990 and for the fourth one on 11 January 1991.

Four nominated members retired on 2 April 1986. Nominations in their places were made on 12 May 1986 and in place of those who retired on 11 May 1992, nominations were made on 27 August 1993.

Four nominated members retired on 26 September 1988. In their places nominations were made of three members on 25 November 1988 and of the fourth member on 15 June 1989.

One nominated member expired on 12 January 1992; two nominated members retired on 24 November 1994; three nominated members retired on 14 June 1995, 27 May 1996 and 10 January 1997, respectively; two nominated members retired on 17 September 1996 and one nominated member expired on 24 May 1997. Nominations against these 9 vacancies were made on 27 August 1997.

Four nominated members retired on 26 August 1999, and nominations in their places were made on 22 November 1999.

Eight nominated members retired on 26 August 2003. Seven members were nominated on 27 August 2003. Another member Kumari Nirmala Deshpande was nominated on 24 June 2004.

One nominated member, Shri Vidya Nivas Misra, passed away in February 2005 and Shri Ram Jethmalani was nominated on 10 April 2006 for the remainder of Shri Misra's term, *i.e.*, upto 26 August 2009.

Four nominated members retired on 21 November 2005. Three members were nominated on 16 February 2006 and one member on 10 April 2007.

One nominated member, Dr. K. Kasturirangan resigned on 8 July 2009 and six members retired on 26 August 2009. Two members were nominated on 18 November 2009 and five members on 22 March 2010.

On an occasion, a member made a Special Mention to draw the attention of the House to the inordinate delay in filling the vacancies caused by the retirement of four nominated members on 2 April 1982. The member, *inter alia*, contended that it was the first time in thirty years that two sessions had passed by, more than three and a half months elapsed and the seats remained vacant; normally the nominations should have been announced on 3 April 1982, when the Election Commission notified new members elected in the biennial elections. The member, therefore, wanted the Government to make its position clear in the House.¹⁶⁴ The nominations, however, took place on 27 September 1982.

Vacation of seats

The situations or circumstances under which a member may cease to be a member of the House and his seat becomes vacant are:

1. A member becomes disqualified, if he –
 - (a) holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;¹⁶⁵

In reference Case No. 7 of 1981 to the Election Commission from the President of India under article 103(2) of the Constitution regarding disqualification of Shri R. Mohanarangam, a sitting member of the Rajya Sabha, a joint petition dated 20 November 1981, was filed by Shri C.T. Dhandapani and Shri Satyendran, Members of the Lok Sabha and others on the ground that Shri Mohanarangam had become subject to the disqualification mentioned in article 102(1)(a) of the Constitution by virtue of his holding the office of the Special Representative of the Government of Tamil Nadu at New Delhi. The Election Commission after inquiry concluded that enjoyment of some of the privileges or benefits like use of staff car, occupation of Tamil Nadu House, Delhi, use of telephone, the office of the Special Representative was to be treated as capable of yielding a profit and that the holder might be reasonably expected to make profit. Further, these facilities gave the holder, Shri Mohanarangam, a status symbol and prestige which was not ordinarily enjoyed by a Member of Parliament as such. The Commission, therefore held that Shri Mohanarangam had become subject

to the disqualification for being a member of the Rajya Sabha under article 102(1)(a) of the Constitution by virtue of his holding the office of the Special Representative of the Tamil Nadu Government at New Delhi which was for the purpose of the said article to be treated as an 'office of profit.' The President of India passed an order accordingly on 8 September 1982.¹⁶⁶

A petition of alleged disqualification of Shrimati Jaya Bachchan under article 103(1) of the Constitution was submitted to the President by Shri Madan Mohan of Kanpur. He averred that after her election to Rajya Sabha, the Uttar Pradesh Government appointed Shrimati Bachchan as the Chairperson of Uttar Pradesh Film Development Council with effect from 14 July 2004, thereby making her an holder of an office of profit within the meaning of article 102(1). On 2 March 2006 the Election Commission opined that the member became disqualified under article 102(1)(a) on and from, 14 July 2004 on her appointment as the Chairperson of the said Council. Accordingly, the President of India, under article 103(1) decided that Shrimati Jaya Bachchan stood disqualified for being a member of Rajya Sabha on and from, 14 July 2004.¹⁶⁷

- (b) is declared by a competent court to be of unsound mind;
- (c) becomes an undischarged insolvent;
- (d) voluntarily acquires the citizenship of a foreign State or is under any acknowledgement of allegiance or adherence to a foreign State; or
- (e) is disqualified under the Tenth Schedule.

In May 1989, August 1989, December 2005 and April 2007, four petitions were received by the Chairman from individual members of the Rajya Sabha seeking disqualification of Shri Mufti Mohammad Sayeed, Shri Satya Pal Malik, Shri Jai Narain Prasad Nishad and Shri Isam Singh for voluntarily giving up the membership of their party, under the Tenth Schedule and the rules framed thereunder. The Chairman referred the cases to the Committee of Privileges for preliminary inquiry and report to him. Thereafter, the Chairman gave his decision holding the concerned members disqualified. The decisions were announced in the House, published in the Bulletin Part-II and notified in the Gazette of India.¹⁶⁸

2. If a person is chosen a member of both the Houses but has not taken his seat in either of them, then he has to intimate in writing to the Election Commission, within ten days of the publication of the declaration that he has been so chosen in the Gazette of India in which House he wishes to serve and thereupon his seat in the House in which he does not wish to serve becomes vacant. The intimation given is final and irrevocable.

If he fails to give such intimation, his seat in the Rajya Sabha becomes vacant after the expiration of that period.¹⁶⁹

3. If a member of one House is chosen a member of other House of Parliament, his seat in the first House becomes vacant with effect from the date on which he is chosen a member of the other House.¹⁷⁰

The number of members of the Rajya Sabha who vacated their seats in the Rajya Sabha consequent upon their election to the Lok Sabha at various times was:

1957 (2nd Lok Sabha)—15; 1962 (3rd Lok Sabha)—15; 1967-68 (4th Lok Sabha)—14; 1971-72 (5th Lok Sabha)—5; 1977 (6th Lok Sabha)—11; 1980 (7th Lok Sabha)—10; 1984 (8th Lok Sabha)—9; 1989 (9th Lok Sabha)—12; 1991 (10th Lok Sabha)—4; 1996 (11th Lok Sabha)—4; 1998 (12th Lok Sabha)—9; 1999 (13th Lok Sabha)—4; 2004 (14th Lok Sabha)—8; 2009 (15th Lok Sabha)—14; and 2014 (16th Lok Sabha)—6.

In 1962, a member who had ceased to be the member of the Rajya Sabha upon his election to the Lok Sabha, raised a point that the cessation of his membership of the Rajya Sabha should take place only on the date of constitution of the new Lok Sabha to which he was elected and not immediately on his election. A reference was, therefore, made to the Ministry of Law suggesting that the word “chosen” in section 68 of the Representation of the People Act, 1951, should have its ordinary natural meaning, and in section 69 which dealt with a sitting member, the date on which a person was chosen to be a member of the other House should be – (a) in the case of a member elected at a general election, the date on which the new Lok Sabha would be deemed to be duly constituted or the date of his election, whichever was later, and (b) in the case of any other elected member, *i.e.*, in the case of a bye-election, the date of his election and the law be amended accordingly. The Ministry of Law did not agree to the suggestion, *inter alia*, on the following grounds:

- (i) There does not appear to be any valid reason as to why the word “chosen” should not be given its ordinary and natural meaning in cases, both of general elections and bye-elections. It may be that the constitution of the Lok Sabha on a general election may take place some time later, that is to say, on the issue of the notification under section 73 of the Representation of the People Act, 1951, but that cannot obliterate the fact that a person has already been “chosen” as a member of the Lok Sabha. Had the intention of the framers of the Constitution been otherwise, then they would not have used at all the word “chosen” in the second part of article 101(1).
- (ii) From the standpoint of principle, there is no reason for giving different meanings to the word “chosen”. The principle seems

to be that a person cannot have divided loyalties to the two Houses of Parliament. The fact that a sitting member of one House has been chosen to the other House shows the absence of his loyalty and attachment for the House of which he is a sitting member. In such a case, the sooner he leaves the House of which he is a sitting member, the better for that House and for that person also, because a person has no right to serve even for a single day a House which he does not like. It is possible to conceive that his love for the new House as evidenced by his election thereto may come into clash with his obligation and duty to the House of which he is the sitting member. Every Member of Parliament takes an oath or a solemn affirmation that he will "faithfully discharge the duty upon which he is about to enter". If a person after his election, say, to the Lok Sabha, continues to be a member of the Rajya Sabha, he may not be able to discharge faithfully his duties as a member of the Rajya Sabha and may thereby act in violation of the oath or solemn affirmation which he has taken. This is why the word "chosen" has been used in the second part of article 101(1) and that word has been given a uniform meaning both in sections 68 and 69 of the Representation of the People Act.

- (iii) It is possible to imagine a situation in which the two Houses may come to clash. As for example, the two Houses may disagree on an important Bill and political complexion of the two Houses may be different. In such a case, if a sitting member of the Rajya Sabha who has been chosen as a member of the Lok Sabha, is allowed to continue as a member even after he has been so chosen, his voting in the House which he has discarded may easily tilt the balance thereby causing a political and constitutional crisis having serious repercussions.
- (iv) It is said that if a sitting member of the Rajya Sabha ceases to be a member of that House on the date of his election to the Lok Sabha, then, he ceases to be a member of the Rajya Sabha even before the Lok Sabha is duly constituted, thereby he may not be able to attend any session of the Rajya Sabha which may be called during the interregnum. This is no doubt an inconvenience, but this is not likely to be a glaring inconvenience because the interregnum, in any case, cannot be long. And on the principles stated above, every sitting member of the Rajya Sabha who is chosen as a member of the Lok Sabha should not hesitate to bear up with this little inconvenience.¹⁷¹

4. If a person is elected to more than one seat in the House, then all the seats become vacant, unless he resigns within fourteen days all but one of the seats.¹⁷²

Shri Mehr Chand Khanna was elected from Delhi in April 1956. Subsequently, he was elected from West Bengal on 13 December 1956.

He resigned his seat from Delhi on 15 December 1956. He took oath as a member from West Bengal on 17 December 1956.¹⁷³

Shri Jagannath Prasad was elected from Rajasthan on 27 February 1965 and took oath on 3 March 1965. He was elected again from that State to fill another seat on 9 March 1966. He resigned his earlier seat on 21 March 1966 and again took oath of the later seat on 22 March 1966.¹⁷⁴

Shri Somappa R. Bommai was elected from Odisha on 2 July 1992, and his term was to expire on 1 July 1998. He was elected again from Karnataka in biennial elections to the Rajya Sabha on 20 March 1998. He resigned his earlier seat from the State of Odisha on 2 April 1998, as per provisions of section 70 of the Representation of the People Act, 1951, read with section 91 of the Conduct of Election Rules, 1961.¹⁷⁵

Prof. Ram Deo Bhandari was elected from Bihar on 8 July 1992. He was elected again from that State in bye-election to Rajya Sabha on 10 June 1998. He resigned his earlier seat on 22 June 1998 as per provisions of section 70 of the Representation of the People Act, 1951, read with section 91 of the Conduct of Election Rules, 1961.¹⁷⁶

Shri Narendra Budania was elected from Rajasthan on 4 August 2009, and his term was to expire on 4 July 2010. He was elected again from that State to fill another seat on 15 June 2010. He resigned his earlier seat on 22 June 2010 and again took oath of the latter seat on 26 July 2010.¹⁷⁷

Shri Prem Chand Gupta was elected from Bihar on 10 April 2008, and his term was to expire on 9 April 2014. He was elected again from Jharkhand in biennial elections to the Rajya Sabha on 31 January 2014. He resigned his earlier seat on 12 February 2014, as per provisions of section 70 of the Representation of the People Act, 1951, read with section 91 of the Conduct of Election Rules, 1961.¹⁷⁸

Dr. Kanwar Deep Singh was elected from Jharkhand on 8 July 2010, and his term was to expire on 7 July 2016. He was elected again from West Bengal in biennial elections to the Rajya Sabha on 7 February 2014. He resigned his earlier seat on 19 February 2014, as per provisions of section 70 of the Representation of the People Act, 1951, read with section 91 of the Conduct of Election Rules, 1961.¹⁷⁹

5. If a person is chosen as a member both of the Rajya Sabha and a House of the State Legislature, his seat in the Rajya Sabha becomes vacant unless he has resigned his seat in the State Legislature within a period of fourteen days from the date of publication of the declaration of his election in the Gazette of India or in the State Gazette whichever is later.¹⁸⁰

Shri Joy Bhadra Hagjer, a member was elected to the Legislative Assembly of Assam on 3 March 1962. His seat in the Rajya Sabha became vacant on 17 March 1962.

Shri M.A.M. Naicker was elected to the then Madras Legislative Council on 1 April 1964. His seat in the Rajya Sabha became vacant on 15 April 1964.

Shri L. Ganesan was elected to the Tamil Nadu Legislative Council on 28 March 1986. His seat in the Rajya Sabha became vacant on 10 April 1986.¹⁸¹

The seat of Shri Ghulam Rasool Kar, a nominated member of the Rajya Sabha became vacant on 28 December 1987, consequent upon his election to the J & K Legislative Council on 14 December 1987.¹⁸²

Shri D.B. Chandre Gowda, a member from Karnataka vacated his seat in the Rajya Sabha on 14 December 1989, consequent on his election to Karnataka Legislative Assembly on 30 November 1989.¹⁸³

Shri R.K. Dorendra Singh, a member from Manipur vacated his seat in the Rajya Sabha on 12 March 1990, consequent upon his election to the Manipur Legislative Assembly.¹⁸⁴

Dr. Jagannath Mishra, a member from Bihar vacated his seat in the Rajya Sabha on 16 March 1990, following his election to the Bihar Legislative Assembly.¹⁸⁵

Shrimati Omem Moyong Deori, a member from Arunachal Pradesh vacated her seat in the Rajya Sabha on 19 March 1990, following her election to the Arunachal Pradesh Legislative Assembly.¹⁸⁶

Km. Mayawati, a member from Uttar Pradesh vacated her seat in the Rajya Sabha on 25 October 1996, following her election to the Uttar Pradesh Legislative Assembly.¹⁸⁷

Shrimati Anandiben Jethabhai Patel, a member from Gujarat vacated her seat in the Rajya Sabha on 12 March 1998, consequent upon her election to the Gujarat Legislative Assembly.¹⁸⁸

Shri S. M. Krishna, a member from Karnataka vacated his seat in the Rajya Sabha on 14 October 1999, following his election to the Karnataka Legislative Assembly.¹⁸⁹

Shri Raj Mohinder Singh, a member from Punjab vacated his seat in the Rajya Sabha on 1 March 2001, following his election to the Punjab Legislative Assembly on 23 February 2001.¹⁹⁰

Shri Rajnath Singh, a member from Uttar Pradesh vacated his seat in the Rajya Sabha on 19 April 2001, following his election to the Uttar Pradesh Legislative Assembly on 9 April 2001.¹⁹¹

Shri N. Thalavai Sundaram, a member from Tamil Nadu vacated his seat in the Rajya Sabha on 18 May 2001, following his election to the Tamil Nadu Legislative Assembly on 13 May 2001.¹⁹²

Md. Salim, a member from West Bengal vacated his seat in the Rajya Sabha on 24 May 2001, following his election to the West Bengal Legislative Assembly.¹⁹³

Sardar Balwindar Singh Bhunder, a member from Punjab vacated his seat in the Rajya Sabha on 7 March 2002, following his election to the Punjab Legislative Assembly.¹⁹⁴

Shri Mohd. Azam Khan, a member from Uttar Pradesh vacated his seat in the Rajya Sabha on 9 March 2002, following his election to the Uttar Pradesh Legislative Assembly.¹⁹⁵

Shri Sharief-ud-Din Shariq, a member from Jammu & Kashmir vacated his seat in the Rajya Sabha on 26 October 2002, following his election to the Jammu & Kashmir Legislative Assembly.¹⁹⁶

Shri Munavvar Hasan, a member from Uttar Pradesh vacated his seat in the Rajya Sabha on 27 January 2004, following his election to the Uttar Pradesh Legislative Council.¹⁹⁷

Shri Man Mohan Samal, a member from Odisha vacated his seat in the Rajya Sabha on 23 May 2004, following his election to the Odisha Legislative Assembly.¹⁹⁸

The seat of Shri Stephen Marandi, a member from Jharkhand was declared vacant in the Rajya Sabha under article 101(2) of the Constitution, read with rule 2 of the Prohibition of Simultaneous Membership Rules, 1950 on 16 March 2005 consequent upon his election to the Jharkhand Legislative Assembly.¹⁹⁹

Shri Ghulam Nabi Azad, a member from Jammu & Kashmir vacated his seat in the Rajya Sabha on 29 April 2006, following his election to the Jammu & Kashmir Legislative Assembly on 27 April 2006.²⁰⁰

Shri N. K. Premachandran, a member from Kerala vacated his seat in the Rajya Sabha on 17 May 2006, following his election to the Kerala Legislative Assembly on 11 May 2006.²⁰¹

Shri Suresh Bhardwaj, a member from Himachal Pradesh vacated his seat in the Rajya Sabha on 9 January 2008, consequent upon his election to the Himachal Pradesh Legislative Assembly in December 2007.²⁰²

The seat of Shri T. R. Zeliang, a member from Nagaland was declared vacant in the Rajya Sabha on 24 March 2008, consequent upon his election to the Nagaland Legislative Assembly on 10 March 2008 in accordance with article 101(2) of the Constitution read with rule 2 of the Prohibition of Simultaneous Membership Rules, 1950.²⁰³

Shri Hemant Soren, a member from Jharkhand vacated his seat in the Rajya Sabha on 4 January 2010, consequent upon his election to the Jharkhand Legislative Assembly in 2009.²⁰⁴

Shri Prithviraj Chavan, a member from Maharashtra vacated his seat in the Rajya Sabha on 6 May 2011, consequent upon his election to the Maharashtra Legislative Council on 27 April 2011.²⁰⁵

Shri Anil H. Lad, a member from Karnataka vacated his seat in the Rajya Sabha on 20 May 2013, consequent upon his election to the Karnataka Legislative Assembly on 8 May 2013.²⁰⁶

Shrimati Maya Singh, a member from Madhya Pradesh vacated her seat in the Rajya Sabha on 23 December 2013, consequent upon her election to the Madhya Pradesh Legislative Assembly on 10 December 2013.²⁰⁷

Shri Shashi Bhusan Behera and Shri Rabinarayan Mohapatra, members from Odisha vacated their seats in the Rajya Sabha on 28 May and 30 May 2014 respectively consequent upon their election to the Odisha Legislative Assembly.²⁰⁸

Shri Ranbir Singh Parjapati and Shri Mohammad Shafi, members from Haryana and Jammu and Kashmir vacated their seats in the Rajya Sabha on 1 November 2014 and 12 January 2015 respectively consequent upon their election to the Haryana and Jammu and Kashmir Legislative Assemblies respectively.²⁰⁹

A point was raised whether a member who has been appointed a Minister in a State could continue to sit in the House. The Chairman ruled that the Minister concerned had not become subject to any of the disqualifications. The question of disqualification could arise when that member was chosen a member of the State Legislature. On the Question of propriety of such a member taking part in the proceedings of the House, the Chairman observed:

It does seem somewhat odd that a member functioning as a Minister in a State should be attending the Rajya Sabha and taking part in the proceedings thereof. I would, however, like to leave it to the good sense of the member.²¹⁰

6. If a member's election is declared void by the High Court,²¹¹ his seat becomes vacant as soon as the order is pronounced by the Court.²¹² Where stay has been granted on the operation of the Order, it is deemed never to have taken effect.²¹³ Where the Supreme Court allows the member to attend the House pending disposal of appeal by the said Court only for the days necessary to keep the appellant member's seat alive, the member continues to be a member of the House subject to restrictions mentioned in the order of the Supreme Court.

The election of Shri K. P. Verma, a member from Madhya Pradesh was set aside by the Election Tribunal, Bhopal on 22 December 1960, which was subsequently upheld by the Madhya Pradesh High Court, on appeal.²¹⁴

The election of Dr. Anup Singh, a member from Punjab was set aside on 22 November 1962.²¹⁵

Shri John *alias* Valampuri John was declared elected to the Rajya Sabha from the State of Tamil Nadu during the biennial elections held in March 1974. His election to the Rajya Sabha was, however, challenged in the Madras High Court, on the ground that he had not completed thirty years of age as required under article 84 of the Constitution, on the date of filing his nomination. The Madras High Court, on 14 October 1974, declared his election to the Rajya Sabha as void and set it aside. Shri John subsequently appealed to the Supreme Court against the judgment of the Madras High Court. The Supreme Court granted *ex parte* stay on 10 January 1975, on certain terms. On 12 April 1977, the Supreme Court dismissed the appeal upholding the judgment of the Madras High Court declaring Shri John's election as void since he had not completed thirty years of age on the date of scrutiny of nominations.²¹⁶

The Supreme Court set aside the election of Shri Raghbir Singh Gill from Punjab on 9 May 1980.²¹⁷

The election of Shri Amritlal Basumatary was set aside by the High Court of Guwahati on 7 November 1990 and the Supreme Court by its Order dated 1 August 1991, upheld the judgment of the High Court.²¹⁸

The election of Shri Shibu Soren was set aside by the High Court of Judicature at Patna *vide* its order dated 10 May 2000. On an appeal by Shri Soren, the Supreme Court stayed the operation of the Order of the High Court of Judicature at Patna by its order dated 22 May 2000. The Supreme Court *vide* its judgment dated 19 July 2001 affirmed the judgment of the Patna High Court setting aside the election of Shri Shibu Soren to the Rajya Sabha and upheld the declaration made by the High Court in favour of Shri Dayanand Sahay.²¹⁹

7. If a member has been convicted or found guilty of certain offences under the Indian Penal Code or of an electoral offence mentioned in section 125 or section 135 or section 136 of the Representation of the People Act, 1951 or has incurred any other disqualification mentioned in Part II, Chapter III of the said Act, his seat becomes vacant.²²⁰

Shri Rasheed Masood, member was convicted under section 120B read with sections 420 and 468 of the Indian Penal Code (45 of 1860) and sub-section (2) of section 13 read with clause (d) of sub-section (1) of section 13 of the Prevention of Corruption Act, 1988 (49 of 1988) on the 19 September 2013 for offences under both enactments on 1 October 2013. Shri Masood was, thus disqualified from his membership of the Rajya Sabha from his date of conviction, *i.e.* 19 September 2013

in terms of section 8 of the Representation of the People Act, 1951 (43 of 1951) read with sub-clause (e) of clause (1) of article 102 of the Constitution.²²¹

8. If a member remains absent from all the meetings of the House for a period of sixty days or more without the permission of the House, his seat may become vacant.²²²

A member was not granted leave of absence. However, no motion to unseat him was moved in the House on that score.²²³

Another member did not apply for leave of absence even though his absence exceeded sixty days. No action, however, was initiated to unseat him under article 101(4).²²⁴

An elected member (Shri Barjinder Singh Hamdard) from Punjab absented himself from the sittings of the Rajya Sabha for more than 60 days without applying for any leave of absence to the Chairman, Rajya Sabha. The fact was brought to the notice of the Leader of the House (Shri Jaswant Singh) by the Secretary-General, Rajya Sabha. Later on the Minister of Parliamentary Affairs and Information Technology (Shri Pramod Mahajan) moved a motion in the House on 21 December 2000 that in pursuance to article 101(4) of the Constitution, the seat of Shri Barjinder Singh Hamdard who had absented himself from all the meetings of the House for more than 60 days, be declared vacant. The motion was adopted by the House. A notification declaring the seat of said member vacant was also issued.²²⁵

9. A member's seat becomes vacant consequent upon adoption of a motion by the House expelling the member.

A member was expelled from the House for his conduct "derogatory to the dignity of the House and its members, and inconsistent with the standards which the House expects from its members" by a motion moved by the Leader of the House and adopted by the House, on the basis of the Report of the Committee appointed specifically for the purpose of investigation of the conduct and activities of the concerned member.²²⁶

Consequent on the adoption of a motion by the House on 23 December 2005 agreeing with the recommendations of the 7th Report of the Committee on Ethics, Dr. Chhatrapal Singh Lodha was expelled from the membership of the House, as his conduct was derogatory to the dignity of the House and inconsistent with the Code of Conduct, which had been adopted by the House. Consequently, Dr. Lodha ceased to be a member of the Rajya Sabha *w.e.f.* 23 December 2005, afternoon.²²⁷

Dr. Swami Sakshiji Maharaj was expelled from the membership of the Rajya Sabha consequent on the adoption of a motion of the 8th Report of the Committee on Ethics by the House on 21 March 2006.²²⁸

10. If a member is elected to the office of the President,²²⁹ or of the Vice- President,²³⁰ or is appointed as Governor of a State,²³¹ his seat in the House becomes vacant upon his entering upon the office to which he is elected or appointed, as the case may be.

Three members, namely, Dr. Zakir Husain, Hafiz Mohd. Ibrahim and Shri G.S. Pathak were appointed as Governors of Bihar, Punjab and Mysore, respectively. They assumed office on 6 August 1957, 4 May 1964 and 13 May 1967, respectively. They ceased to be members of the Rajya Sabha from those dates without tendering resignation from the membership of the Rajya Sabha.

Shri B. Satyanarayan Reddy, a member from Andhra Pradesh resigned from his membership of the Rajya Sabha on 11 February 1990 upon his appointment as Governor of Uttar Pradesh.²³²

Shri Virendra Verma, a member from Uttar Pradesh resigned from his membership of the Rajya Sabha on 14 June 1990 upon his appointment as Governor of Punjab.²³³

Shri Sunder Singh Bhandari, a member from Rajasthan resigned from his membership of the Rajya Sabha on 26 April 1998 upon his appointment as Governor of Bihar.²³⁴

Shri T.N. Chaturvedi, a member from Uttar Pradesh resigned from his membership of the Rajya Sabha on 20 August 2002 upon his appointment as Governor of Karnataka.²³⁵

Dr. A.R. Kidwai, a member from NCT of Delhi resigned from his membership of the Rajya Sabha on 7 July 2004 upon his appointment as Governor of Haryana.²³⁶

Shri Hans Raj Bhardwaj, a member from the State of Haryana resigned from his membership of the Rajya Sabha on 29 June 2009 upon his appointment as Governor of Karnataka.²³⁷

Shri Shivraj Vishwanath Patil, a member from the State of Maharashtra resigned from his membership of the Rajya Sabha on 21 January 2010 upon his appointment as Governor of Punjab.²³⁸

Shri Kaptan Singh Solanki, a member from the State of Madhya Pradesh vacated his seat in the Rajya Sabha on 27 July 2014, the date on which he entered upon his office as Governor of the State of Haryana.²³⁹

11. If a member is disqualified for being a member of the House, his seat becomes vacant.²⁴⁰

Dr. M. Chenna Reddy was elected to the Rajya Sabha in the biennial elections for the term commencing on 3 April 1968. Earlier he was elected to the Andhra Pradesh Legislative Assembly in the elections held in February 1967. In respect of that election, the Andhra Pradesh

High Court had held the election void on ground of corrupt practice. Later, the Supreme Court, on appeal, also upheld the judgment of the High Court. Thereupon the Election Commission informed all concerned that Dr. Reddy had incurred disqualification for being a Member of Parliament or a State Legislature for six years with effect from 26 April 1968, the date of High Court's judgment. Dr. Reddy, therefore, ceased to be the member of the Rajya Sabha from that date.

The following members were disqualified under the provisions of the Tenth Schedule to the Constitution of India:-

Shri Mufti Mohammad Sayeed (INC) was disqualified on 28 July 1989.²⁴¹

Shri Satya Pal Malik (INC) was disqualified on 14 September 1989.²⁴²

Shri Jai Narain Prasad Nishad (BJP) was disqualified on 26 March 2008.²⁴³

Shri Isam Singh (BSP) was disqualified on 4 July 2008.²⁴⁴

12. When a member resigns his seat and his resignation is accepted by the Chairman, he ceases to be a member upon acceptance of the resignation.²⁴⁵

Originally the Constitution did not contain any provision for acceptance of the resignation by the Presiding Officer. The requirement of acceptance of resignation by the Presiding Officer was introduced by the Constitution (Thirty-third Amendment) Act, 1974, to put a check on forced resignations.

The resignation of the member has to be in writing under his hand and addressed to the Chairman.²⁴⁶ If a member hands over the letter of resignation to the Chairman and informs him that the resignation is voluntary and genuine and the Chairman has no information or knowledge to the contrary, the Chairman may accept the resignation immediately.²⁴⁷ If the Chairman receives the letter of resignation either by post or through some other person, the Chairman may make such inquiry as he thinks fit, to satisfy himself that the resignation is voluntary and genuine. If the Chairman, after making a summary inquiry either himself or through the agency of the Rajya Sabha Secretariat or through such other agency as he may deem fit, is satisfied that the resignation is not voluntary or genuine, he may not accept the resignation.²⁴⁸

The resignation takes effect from the date specified by the member if accepted by the Chairman by that date and if no such date is specified then from the date of acceptance by the Chairman. A member may withdraw his resignation at any time before it is accepted by the Chairman. He cannot do so after its acceptance by the Chairman.²⁴⁹

A member from Andhra Pradesh sent a letter dated 1 November 1989, which was received by post in the Secretariat on 7 November 1989

resigning his seat from the Rajya Sabha on the ground that he was contesting the Assembly election. Attempts were, therefore, made to contact the member to satisfy whether the resignation was voluntary. By the time a decision on the resignation could be taken, the member personally visited Delhi and gave another letter that he had lost the election and would like to continue in the Rajya Sabha and withdrew his resignation. The Chairman accepted the request and the member was allowed to withdraw the resignation.²⁵⁰

After the resignation is accepted by the Chairman, the House is informed that the member concerned has resigned his seat in the House and the Chairman has accepted the resignation.²⁵¹ When the House is not in session, the information is communicated to the House immediately after it reassembles.²⁵²

As soon as may be, after the Chairman has accepted the resignation of a member, the Secretary-General causes the information to be published in the Bulletin Part-II and the Gazette of India, Extraordinary and forwards a copy of the Gazette Notification to the Election Commission for taking steps to fill the vacancy thus caused. Where the resignation is to take effect from a future date, the information is published in the Bulletin and the Gazette not earlier than that date.²⁵³ Reasons given by a member in his letter of resignation are not conveyed to the House.

When the Chairman announced the resignation of a member, another member asked, "why". The Chairman observed, "If a member resigns I do not ask why."²⁵⁴ {This was prior to 1975}

On an occasion when the Chairman informed the House of the resignation of a member, another member wanted to know whether the resigning member had given any reasons. The Chairman replied in the negative. Another member observed that the Chairman had to satisfy himself that it was not a resignation under duress. The member, therefore, wanted to know whether the Chairman was satisfied that the member concerned had resigned of his own free will. The Chairman stated that after the resignation was accepted, it was final and that no member had a right to question the decision of the Chairman. About the particular resignation, he clarified, however:

I am satisfied. I know the provisions of the Constitution. I took time. I contacted him. I wanted him to come and speak to me. It was only when I was completely satisfied that he has not written under duress that I accepted his resignation. His signatures are there. Everything is there. I am satisfied and the thing is final.²⁵⁵

A member may also resign his seat before he has taken his seat in the House by making the necessary oath/affirmation.

Shri Harideo Joshi, a member elected from Rajasthan resigned his seat on 3 April 1958, the date on which his term commenced. He had not taken oath and no announcement of the resignation was made.

Shri M.C. Chagla who was elected from Maharashtra and whose term commenced on 2 April 1962, resigned on 17 April 1962.²⁵⁶ He had not taken oath.

Shri B.D. Behring, a member from Manipur, resigned before making oath/affirmation on 10 April 1990, the date on which his term of office also commenced.²⁵⁷

Shrimati Leeladevi Renuka Prasad, a member from Karnataka, resigned on 22 April 1996, before making oath/affirmation; her term of office had commenced on 10 April 1996.²⁵⁸

Salary, allowances, pension and other facilities

Salary

Members of either House of Parliament are entitled to receive such salary and allowances as may from time to time be determined by Parliament by law.²⁵⁹ Pursuant to this provision Parliament has enacted the Salary, Allowances and Pension of Members of Parliament Act, 1954 (30 of 1954). The main provisions regarding salary, etc. of members are made by that Act but details are worked out by a Joint Committee consisting of members of both Houses of Parliament which is entrusted with the rule-making task after consulting the Union Government for regulating the payment of daily and travelling allowances and pension. The rules are subject to approval of and confirmation by the Presiding Officers of the two Houses.²⁶⁰

Each member other than a Minister or Officer of the House is entitled to receive a salary at the rate of rupees fifty thousand per mensem²⁶¹ during the whole of his term of office. The term of office of a member of the Rajya Sabha begins, when a member is elected in biennial election or nominated, from the date of publication of the notification in the Official Gazette notifying his election or nomination under section 71 of the Representation of the People Act, 1951, or when he is elected in a bye-election or nominated, from the date of his election as provided under section 67A of the Representation of the People Act or the date of nomination, as the case may be,²⁶² and ends on the date on which his seat becomes vacant by reason of death, resignation, retirement or otherwise.

Constituency allowance

A member is also entitled during the whole of his term of office a Constituency Allowance of rupees forty-five thousand per mensem²⁶³ and Office Expense Allowance at the rate of rupees forty-five thousand per mensem²⁶⁴ out of which rupees fifteen thousand will be for meeting expenses

on stationery items etc. Rupees thirty thousand to person(s) engaged for obtaining secretarial assistance and one such person shall be computer literate.

Daily allowance

In addition to the monthly salary and the allowances mentioned above, an allowance is paid to each member at the rate of rupees two²⁶⁵ thousand for each day during any period of residence on duty *i.e.*, period of residence at a place where the session of the House or a meeting of the Committee is held or where any other business connected with his duties as a member is transacted for attending the session or sitting of the Committee or other business.²⁶⁶ However, no member is entitled to the allowance unless he signs the Attendance Register.²⁶⁷ The daily allowance is admissible during three days preceding the commencement of the session and three days succeeding the adjournment of the House *sine die* or for a period exceeding five days.²⁶⁸ In the case of a sitting of the Committee or other business, the daily allowance is admissible during two days preceding the commencement of the sitting of the Committee or the business and two days succeeding its adjournment.²⁶⁹

Travelling allowance for session/Committee meeting

The travelling allowance admissible for a journey performed in India by a member from his usual place of residence to the place of duty and back for the purpose of attending a session of the House or a meeting of the Committee including Consultative Committee or for the purpose of attending to any other business connected with his duties as a member is at the following rates:

- (a) Journey by rail: An amount equal to one first class plus one second class fare for each such journey irrespective of the class in which the member actually travels;²⁷⁰
- (b) Journey by air: An amount equal to one and one-fourth of the air fare for each journey;²⁷¹
- (c) Journey by steamer: An amount equal to one and three-fifths of the fare (without diet) for the highest class in the steamer for each such journey or part thereof;²⁷² and
- (d) Journey by road: A road mileage at the rate of rupees sixteen per Km. including the journey from and to the railway station, port or airport to and from a member's usual place of residence or residence at New Delhi or at the place of a meeting of the Committee.²⁷³

Air journeys during a year

A member is entitled to thirty-four single air journeys (*i.e.*, one air fare) performed by him either alone or along with spouse or any number of companions or relatives from any place in India to any other place in India during a year. The 'Year' begins with the date on which a member's term of office commences and each of the subsequent years. Out of these 34 free air journeys, spouse or companion of a member is entitled to travel alone to a maximum of eight air journeys per year to visit the member.²⁷⁴ If the number of journeys performed by any member by air is less than thirty-four in a year, the number of journeys not availed by the member will be carried over to the following year.²⁷⁵ Air journeys performed in excess of thirty-four in a year, subject to a maximum of eight can be adjusted from the quota of thirty-four air journeys available for the next year.²⁷⁶

Intermediate journey during session/Committee meetings

If a member performs an intermediate journey for visiting any place in India in the midst of session or a meeting of a committee which is less than fifteen days, his entitlement is regulated in the following manner:

- (a) Journey by rail: A member is paid an amount equal to one first-class fare by mail train for each such journey or daily allowance which would have been admissible for the days of his absence from the session or place of meeting, whichever is less.
- (b) Journey by air: Air journey shall be adjusted from the quota of 34 single air journeys a year available to a member.

Allowances during short intervals of session/sitting of parliamentary committees

Where the interval between the adjournment of the House or a sitting of a committee and the reassembly of the House/the next sitting of the committee at the same place, does not exceed five days and the member stays at the place during the interval, he is paid daily allowance for that period. If he performs any journey during this period then he is paid travelling allowance as admissible for intermediate journey.²⁷⁷

When the interval between the adjournment of the House and its recommencement exceeds five days, a member is paid the following allowances:

- (i) Travelling allowance for return journey after the adjournment of the House;

- (ii) Travelling allowance for forward journey for attending the House upon its reconvening;
- (iii) Daily allowance for three days immediately succeeding the adjournment of the House if the member actually stays in Delhi during that period; and
- (iv) Daily allowance for three days immediately preceding the recommencement of the House if the member arrives three days in advance.

Travelling allowance in case of postponement or sudden adjournment of House/Committee

A member who arrives at the place where the session of the House or a sitting of a committee is held, without the knowledge about its postponement then the admissibility of travelling allowance is decided by the Chairman of the Rajya Sabha on the basis of facts of each case. For postponed meeting of a Consultative Committee the admissibility of travelling allowance is decided by the Minister of Parliamentary Affairs. No daily allowance, however, is admissible in such a case.²⁷⁸

Travelling allowance for journey abroad

Travelling allowance is admissible to a member if he, in the discharge of his duties outside India, performs such a journey, as per rules.²⁷⁹

Rail travel facilities

Every member on election/nomination is issued with an Identity Card-cum-Railway Pass. The Card is non-transferable. It entitles the member and his/her spouse to travel in first class air-conditioned or executive class at any time by any railway in India with one person to accompany in air-conditioned two-tier.

Until a member is provided with an Identity Card-cum-Railway Pass, he is entitled to an amount equal to one first class air-conditioned or executive class rail fare for any journey performed by him in connection with his duties as a Member of Parliament. Similarly a member who, on ceasing to be a member, surrenders his pass and performs a return journey by rail after attending session or committee meeting is entitled to an amount equal to one first class air-conditioned or executive class rail fare for that journey.²⁸⁰

Travel facilities for spouse

Every member on election/nomination is issued with a separate railway pass for his/her spouse. This entitles his or her spouse to travel in first

class air-conditioned or executive class in any train from the usual place of residence of the member to Delhi and back.²⁸¹ When Parliament is in session, spouse of the member is entitled to travel by air and partly by rail from the usual place of residence of the member to Delhi or back subject to the condition that the total number of such air journey shall not exceed eight in a year.²⁸² The journey can be undertaken after the issue of summons for the session and return journey can be performed at any time before the prorogation of such session.

Accommodation facilities

A member is entitled without payment of licence fee for housing accommodation in the form of a flat throughout his term of office. The accommodation is allotted by the House Committee which also decides about the entitlement of a member to a particular type of accommodation *i.e.*, whether bungalow or a flat.

A member can retain the accommodation allotted to him for a maximum period of one month after his retirement or resignation. In the event of death of a member, his family can retain the accommodation on normal rent for a maximum period of six months from the date of demise of the member.²⁸³

Electricity and water facilities

Free supply of water and electricity is provided at the residence of a member upto a maximum of 50,000 units of electricity, 25,000 units each measured on light/power meters or pooled together, and 4000 kilolitres of water per annum.²⁸⁴

Telephone facilities

A member is entitled to have two telephone connections – one at his Delhi residence or office and another at any place in his State or constituency during his term. No installation or rental charges for those telephones are required to be paid by him. The first 1,00,000 local calls made from both the telephones together during a year are free. The trunk call bills of the member may be adjusted within the monetary equivalent of the ceiling of 1,00,000 local calls. Excess calls are adjustable against the next year's quota.²⁸⁵

Every member is also entitled to one additional telephone either at his residence in Delhi/New Delhi or at his usual place of residence or at the place selected by him within the State or in the State in which he resides and 50,000 free local calls during a year for internet connectivity purposes.²⁸⁶

Also no charges shall be payable by a member in respect of the registration and rental charges of one mobile phone provided by the Mahanagar Telephone Nigam Ltd. (MTNL) and another mobile phone provided by MTNL or Bharat Sanchar Nigam Ltd., on his request and the calls made by a member from such mobile phone shall be adjusted from the total free calls available to him.²⁸⁷

Broadband Internet Service

Members have been provided broadband internet facility with 1 Mbps speed in lieu of 10,000 local calls per annum, out of the quota of 1,50,000 free local calls per annum available to every member with unlimited free data download.²⁸⁸

As and when a member retires or ceases to be a member, all the telephone connections are disconnected with immediate effect. However, telephone connections provided to him while he was a member, may be allowed to be converted into his private account as permanent telephone connection under 'Private Subscribers' Category, provided that he has not already availed of a similar connection earlier as an MP/MLA/MLC etc. For the telephone connection, a member has to complete all the formalities as a general subscriber. In case of death of a member, his family can retain the telephone for two months.

Medical facilities

The Central Government Health Scheme (CGHS) as applicable to Class-I Officers of the Central Government in Delhi has been extended to Members of Parliament and their family Members as per the CGHS Rules.²⁸⁹

Foreign exchange

A member is entitled to get a foreign exchange worth rupees one lakh during his whole term for study tours abroad. This is released by the Secretariat on an application.²⁹⁰

Pension to ex-member and family pension to spouse/dependent of the deceased member/ex-member

An ex-member can get pension as per the Salary, Allowances and Pension of Members of Parliament Act, 1954. The current rate of pension is Rs. 20000 per month and Rs. 1500 per month for every year in excess of five years.²⁹¹ This pension is in addition to any other pension an ex-member may receive. The spouse or dependent of the deceased member/ex-member shall be entitled to a family pension equivalent to one-half of the pension which such member would have otherwise received.²⁹²

NOTES AND REFERENCES

1. Ins. by Constitution (Sixteenth Amendment) Act, 1963.
2. Election Commission Not. No. S.O. 1111, 18.3.1968, Gaz. Ext. Pt. II s. 3(ii), Manual of Election Law, Vol. I.
3. R.P. Act, 1951, s. 36(2)(a).
4. Art. 84(c).
5. R.P. Act, 1951, s. 3, for the words “in that State or territory,” the words “in India” substituted by R.P. (Amendment) Act, 2003.
6. R.P. Act, 1950, s. 19.
7. *Ravanna Subanna v. G.S. Kaggeerappa*, AIR 1954 SC 653; *Abdul Shakur v. Rikhab Chand*, AIR 1958 SC 52; *Guru Gobinda Basu v. Sankari Prasad Ghosal*, AIR 1964 SC 254; *Umrao Singh v. Darbara Singh*, AIR 1969 SC 262; *D.R. Gurushanthappa v. Abdul*, AIR 1969 SC 744; *Kanta v. Manak Chand*, AIR 1970 SC 694; *Shivamurthy Swami Inamdar*, etc. v. *Agadi*, 1971 (3) SC 870; *Bhagwandass Sehgal v. State of Haryana & Others*, AIR 1974 SC 2355; *Karbhari v. Shanker*, AIR 1975 SC 575; *Divya Prakash v. Kultar Chand Rana*, AIR 1975 SC 1067; *Madhukar v. Jaswant Chobbildas Rajani & others*, AIR 1976 SC 2283; *Biharilal v. Roshan Lal*, AIR 1984 SC 385; *Satrucharla v. Vyricherla*, AIR 1992 SC 1959; and *A.K. Subbaiah v. Ramakrishna Hegde*, AIR 1994 Kant. 35.
8. Parliamentary Committees - Joint Committee on Offices of Profit: An Introductory Guide, Lok Sabha Secretariat, New Delhi, May 2014, pp. 2-4.
9. 10 Rpt. JCOP-7 LS, para 10.5 and 10.6.
10. *Kanta v. Manak Chand*, AIR 1970 SC 694; and *Ibomcha v. Chandra Mani*, AIR 1977 SC 682.
11. *Bhagwandass Sehgal v. State of Haryana*, AIR 1974 SC 2355.
12. Coffee Act, 1942, s. 4(5).
13. Rubber Act, 1947, s. 4(8).
14. Tea Act, 1953, s. 4(3A).
15. Tobacco Board Act, 1975, s. 4(4A).
16. Spices Board Act, 1986, s. 3(4).
17. Wakf Act, 1995, s. 3.
18. Press Council Act, 1978, s. 7(3).
19. R.P. Act, 1951, s. 8(1)(a)-(k).
20. *Ibid.*, s. 8(2).
21. *Ibid.*, s. 8(3).
22. Supreme Court Judgment dated 10 July 2013 in Writ Petition (c) 490 of 2005 and 231 of 2005 declaring section 8(4) of R.P. Act, 1951 as *ultra vires* of the Constitution.
23. F. No. RS 10/2013-T; Not. No. RS 10/2013-T dated 21.10.2013.
24. Not. No. 21/4/2013/TO(B) dated 21.10.2013 issued by the Lok Sabha Secretariat.
25. F. No. RS 46/2014-T; Not. No. RS 46/2014-T dated 30.04.2014.
26. R.P. Act, 1951, s. 8A(1).
27. *Ibid.*, s. 9(1).
28. *Ibid.*, s. 9A.
29. *Ibid.*, s. 10.
30. *Ibid.*, s. 10A.
31. F. No. 10/91-T; and 10/96-T.
32. Art. 103 read with R.P. Act, 1951, s. 8A; and *Election Commission v. Saka Venkata Rao*, AIR 1953 SC 210.
33. Min. of Law & Justice (Legislative Department) Not. GSR No. 131(E) 1.3.85, Gaz. Ext. [II (i)], 1.3.1985.

34. Tenth Sch. para 2(1)(a) and 2(1)(b), read with expln. (a).
35. *Ibid.*, para. 2(2).
36. *Ibid.*, para. 2(3).
37. *Ibid.*, para. 2(1) expln. (b).
38. *Ibid.*, para. 4 and Constitution (Ninety-first Amendment) Act, 2003.
39. *Ibid.*, para. 4(2).
40. *Ibid.*, para. 4(1).
41. *Ibid.*
42. *Ibid.*, para. 4(2).
43. *Ibid.*, para. 5.
44. *Ibid.*, para. 6(1).
45. *Ibid.*, para. 6(2).
46. *Ibid.*, para. 7.
47. *Kihota Hollohan v. Zachilhu*, AIR 1993 SC 412.
48. Tenth Sch. para. 8.
49. F. No. 46/85-T.
50. Not. No. RS 46(ii)/86-T, 18.3.1986.
51. Gaz. Ext. Pt. I s. (i), 18.3.1986; and Bn. (II), 18.3.1986.
52. Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985, R. 3(1).
53. *Ibid.*, R. 3(1) and (2).
54. *Ibid.*, R. 3(2) and (3).
55. *Ibid.*, R. 3(4).
56. *Ibid.*, R. 3(5).
57. *Ibid.*, R. 4(1) and (2).
58. Members of Parliament (Disqualification on the Ground of Defection) Rules, 1985 R. 4(3). For summary of information see Bn. (II), 19.8.1986 and 10.8.1989.
59. *Ibid.*, R. 6.
60. *Ibid.*, R. 7(1), (2) and (3).
61. *Ibid.*, R. 7(4).
62. *Ibid.*, R. 7(5).
63. Bn. (II), 7.11.1989.
64. F. No. RS 46/89-T.-Vol. IV.
65. Members of Rajya Sabha (Disqualification on Ground of Defection) Rules, 1985, R. 7(7).
66. *Ibid.*, R. 8.
67. Art. 80(4) and (5) read with R.P. Act, 1950, ss. 27A and 27H.
68. Inserted by R.P. (Amendment) Act, 2003.
69. See Chapter 2, *Supra*.
70. R.P. Act, 1950, s. 27G.
71. *Ibid.*, s. 27J.
72. R.P. Act, 1951, s. 12.
73. *Pashupati Nath Sukul v. Nem Chandra Jain & Others*, ELR Vol. LXXIV, pp. 83-93.
74. R.P. Act, 1951, s. 29.
75. *Ibid.*, s. 39.
76. *Ibid.*, s. 31.
77. *Ibid.*, s. 32.
78. *Ibid.*, s. 33(1) read with s. 39(2) Proviso (aa); 33(7)(d) as inserted by Act 21 of 1996.

79. R.P. Act, 1951, s. 39(2), *Proviso* to cl. (aa).
80. *Ibid.*, s. 39(2), *Proviso* (a) read with s. 152.
81. *Pashupati Nath Sukul v. Nem Chandra Jain & Others*, ELR Vol. LXXIV, pp. 83-93.
82. *Pashupati Nath Singh v. Harihar Prasad Singh*, AIR 1968 SC 1064.
83. *Virji Ram Sutaria v. Nathalal Premji Bhanvadia*, AIR 1970 SC 765.
84. R.P. Act, 1951, s. 34(1)(a).
85. *Ibid.*, s. 34(2)
86. *Ibid.*, ss. 33(6) and 34(1), *Proviso*.
87. *Ibid.*, 1951., s. 36(2).
88. *Ibid.*, s. 36(4).
89. R.P. Act, 1951, s. 37(1).
90. *Ibid.*, s. 37(2).
91. *Ibid.*, s. 38.
92. *Ibid.*, s. 53(1) and (2).
93. *Ibid.*, s. 56.
94. *Ibid.*, s. 64.
95. *Ibid.*, s. 66.
96. *Ibid.*, s. 67.
97. *Ibid.*
98. *Ibid.*, s. 67A.
99. Conduct of Elections Rules, 1961, R. 85.
100. R.P. Act, 1951, s. 71.
101. *Ibid.*, ss. 147 and 151A.
102. *Ibid.*, ss. 100 and 101.
103. *Ibid.*, s. 81.
104. Krishnaswamy, K.V., *The Single Transferable Vote* (1946), p. 23.
105. Conduct of Elections Rules, 1961, R. 71(4).
106. *Ibid.*, R. 75(1).
107. *Ibid.*, R. 76.
108. *Ibid.*, R. 83 and Schedule.
109. *Ibid.*, R. 73(2).
110. *Ibid.*, R. 78.
111. *Ibid.*, R. 79(1).
112. *Ibid.*, R. 71(6) and (1).
113. *Ibid.*, R. 79(2) and (3).
114. *Ibid.*, R. 71(5).
115. *Ibid.*, R. 79(4)(a).
116. *Ibid.*, R. 71(3).
117. *Ibid.*, R. 79(4).
118. *Ibid.*, R. 79(5) to (7).
119. *Ibid.*, R. 80(1).
120. *Ibid.*, R. 80(2).
121. *Ibid.*, R. 80(3).
122. *Ibid.*, R. 80(5).
123. *Ibid.*, R. 80(6).
124. *Ibid.*, R. 81(1).
125. *Ibid.*, R. 81(2).

126. Conduct of Elections Rules, 1961, R. 81(3).
127. Art. 80(3).
128. *Ram Gopal Singh Sisodia v. Union of India through its Secretary & Ors.*, W.P. (C) 2942/2012, 19 December, 2012.
129. R.P. Act, 1951, s. 155(2).
130. F. No. 17/94-T.
131. R.P. Act, 1951, s. 154.
132. Art. 54 and Expln. thereto added by the Constitution (Seventieth Amendment) Act, 1992.
133. Art. 66(1).
134. For details, see Chapter 4.
135. Tenth Sch. para. 2(3).
136. C.S. Deb., 16.5.1952, c. 46.
137. H.P. Deb., (II), 6.6.1952, c. 1245-47.
138. *Ibid.*, 20.6.1952, c. 2237.
139. Report of the Joint Committee on Payment of Salary and Allowances to, and Abbreviations for, Members of Parliament, July 1952, mts.
140. *Ibid.*
141. *Ibid.*, para. 15.
142. Art. 83(1).
143. R.P. Act, 1951, s. 154(1).
144. *Ibid.*, s. 154(3).
145. *Ibid.*, s. 155(1).
146. R.P. Act, 1951, s. 155(2).
147. Min. of Law Not. No. F. 10(15)/52C, 3.4.1952, Gaz. Ext. [I(i)], 3.4.1952.
148. Min. of Law Not. No. SRO 1669, 6.9.1952, Gaz. Ext. [II(iii)].
149. Election Commission Order No. 35/52-Elect. III, 12.11.1952 and F. No. CS 35/52-L.
150. R.P. Act, 1950, s. 27-I, since repealed.
151. Election Commission Not. No. 35/52-Elec. III, 29.11.1952, Gaz. [I(ii)], 29.11.1952 and F. No. CS 35/52-L.
152. Andhra State Act, 1953, ss. 10, 10(2)(a) and (b).
153. Bn. (II), 15.12.1953 and 23.12.1953.
154. Min. of Law Not. SRO No. 2537, 1.11.1956, Gaz. [II(iii)], 3.11.1956.
155. States Reorganisation Act, 1956, ss. 24-26.
156. Bn. (II), 15.11.1956 and 20.11.1956.
157. *Ibid.*, 19.12.1956 and 21.12.1956.
158. Bombay Reorganisation Act, 1960, s. 9.
159. Punjab Reorganisation Act, ss. 10 and 11; and Bn. (II), 8.12.1966.
160. Report of the Election Commission for 1986 and 1987, p. 29.
161. First Annual Report of the Election Commission, 1983, pp. 50 and 56.
162. Report of the Committee on Electoral Reforms (1990), para. 13.
163. R.S. Deb., 25.2.1966, c. 1404-05.
164. *Ibid.*, 20.7.1982, c. 279-80.
165. Art. 102(1)(a).
166. Min. of Law, Justice & Company Affairs (Legislative Department) Not. S.O. No. 654(E), 8.9.1982; and Bn. (II), 29.9.1982.
167. Bn. (II), 18.3.2006; Shrimati Jaya Bachchan was re-elected from the State of Uttar Pradesh in June 2006. She made and subscribed oath and took her seat in the House on 24 July 2006.

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168. Bn. (II), 15.5.1989, 28.7.1989; Bn. (I), 9.8.1989; *and* Bn. (II), 14.9.1989, 26.3.2008 *and* 4.7.2008.
 169. R.P. Act, 1951, s. 68.
 170. *Ibid.*, s. 69.
 171. F. No. R.S. 18/5/62-L; *cf.*, L.S. Bn. (II), 2.5.1996, declaring the seat of an elected member of the Lok Sabha vacant from the date of his election to the Rajya Sabha *i.e.*, 19.2.1996; the term of Office of that member in the Rajya Sabha, however, commenced on 10.4.1996.
 172. R.P. Act, 1951, s. 70 *read with* Conduct of Elections Rules, 1961, R. 91.
 173. R.S. Deb., 15.12.1956, c. 2545; *and* 17.12.1956, c. 2677.
 174. *Ibid.*, 21.3.1966, c. 3885; *and* 22.3.1966, c. 3973.
 175. F. No. RS/10/1998-T.
 176. *Ibid.*
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 179. *Ibid.*
 180. Prohibition of Simultaneous Membership Rules, 1950, R. 2.
 181. Not. No. RS 10/86-T, 24.4.1986, Gaz. [II(i)], 24.4.1986.
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 186. *Ibid.*
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 192. *Ibid.*
 193. *Ibid.*
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 204. F. No. RS 10/2009-T.
 205. F. No. RS 10/2011-T.
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 207. *Ibid.*
 208. F. No. RS 10/2014-T dated 28.5.2014 *and* dated 30.5.2014.
 209. F. No. RS 10/2014-T dated 3.11.2014 *and* F. No. RS 10/2015-T dated 12.1.2015.
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 259. Art. 106.
 260. Salary, Allowances and Pension of Members of Parliament Act, 1954, s. 9.
 261. *Ibid.*, s. 3; substituted by Act 37 of 2010 w.e.f. 18.5.2009.
 262. *Ibid.*, s. 3 read with s. 2(e).
 263. *Ibid.*, s. 8 and the Members of Parliament (Constituency Allowance) Rules, 1986, R. 2; substituted by GSR 970(E) published in the *Gazette of India, Extraordinary* Part II, Section 3, Sub-section (i) dated 13.12.2010 w.e.f. 1.10.2010.
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 266. *Ibid.*, s. 2(d).
 267. *Ibid.*, s. 3, 1st Proviso.
 268. *Ibid.*, s. 2(d)(i).
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