

# THE KERALA LOCAL AUTHORITIES (PROHIBITION OF DEFECTION) ACT, 1999\*

(ACT 11 OF 1999)

*An Act to prohibit defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being members of the local authorities.*

**Preamble:-**WHEREAS, it is expedient to bring out a comprehensive legislation for removing the ambiguity in the existing laws in so far as they relate to prohibition of defection among members of local authorities and disqualification of the defecting members for being members of the local authorities;

BE it enacted in the Fiftieth Year of the Republic of India as follows-

**1. Short title and commencement.**— (1) This Act may be called the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

(2) It shall be deemed to have come into force on the 2nd day of October, 1995.

**2. Definition.**— In this Act, unless the context otherwise requires,

(i) “block panchayat” means a block panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);

(ii) “coalition” means a coalition made between more than one political parties or between more than one political parties and one or more independents or between one political party and one or more than one independents or between more than one independents for the purpose of contesting any election of a local authority.

**Explanation.**— A member who stood as a candidate in an election with the support of any one of the political parties or coalition shall be deemed to be a member included in that political party or coalition;

(iii) “council” means the Council of a Town Panchayat, a Municipal Council or a Municipal Corporation;

(iv) “councillor” means a councillor elected to the Council of any municipality constituted under the Kerala Municipality Act, 1994 (20 of 1994);

<sup>1</sup>[(iva) “direction in writing” means a direction in writing, signed with date, issued to a member belonging to, or having the support of, a political party, by the person authorised by the political party from time to time to recommend the symbol of the said political party for contesting in election, for exercising the vote favourably or unfavourably or to abstain from voting]

(v) “district Panchayat” means a district panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);

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\* Published in Kerala Gazette Ex. No.707 dt 7-4-1999.

1. Clause (iva) inserted by Act 6 of 2013, w.e.f. 17-1-2012.

- (vi) “Independent” means a person not belonging to any political party;
- (vii) “local authority” means a Panchayat at any level or a Municipality;
- (viii) “member” means a Councillor or a member of a Panchayat at any level elected under the Kerala Panchayat Raj Act, 1994 (13 of 1994);
- (ix) “municipality” means a Town Panchayat, a Municipal Council or a Municipal Corporation, constituted under the Kerala Municipality Act, 1994 (20 of 1994);
- (x) “panchayat” means a village panchayat, a block panchayat or a district panchayat;
- (xi) “political party” means a political party registered under section 29A of the Representation of the People Act, 1951 (Central Act 43 of 1951);
- (xii) “Prescribed” means prescribed by the rules made under this Act;
- (xiii) “Schedule” means the schedule annexed to this Act.
- (xiv) “State” means the State of Kerala;
- (xv) “State Election Commission” means the State Election Commissioner appointed by the Governor under article 243 K of the Constitution of India;
- (xvi) “Village Panchayat” means the Village Panchayat constituted under the Kerala Panchayat Raj Act, 1994 (13 of 1994);
- (xvii) The words and expressions used but not defined in this Act, and defined in the Kerala Panchayat Raj Act, 1994 (13 of 1994) or in the Kerala Municipality Act, 1994 (20 of 1994) shall have the meanings respectively assigned to them in those Acts.

**3. Disqualification on ground of Defection.**—<sup>2</sup>[(1)] Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,-

(a) if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of standing Committee or the Chairman of a standing committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or

in an voting on a no-confidence motion against any one of them except a member of a Standing Committee;

(b) if an independent member belong to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in its behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the Standing Committee; or

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2. Existing section renumbered as sub-section (1) of that section and inserted sub-section (2) & (3) by Act 6 of 2013, w.e.f. 17-1-2012.

(ii) in a meeting of a Panchayat in an election of its President/ Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or in a voting on a no confidence motion against any one of them except a member of a Standing Committee;

(c) if an independent member not belonging to any coalition, joins any political party or coalition; he shall be disqualified for being a member of that local authority.

<sup>2</sup>[(2) The direction in writing issued for the purpose of clauses (a) and (b) of sub-section (1) shall be given to the members concerned in the manner as may be prescribed and copy of such direction in writing shall be given to the Secretary of the Local Self Government Institution concerned.

(3) Where any dispute arises regarding the direction issued under this section between the political party or coalition concerned and the member authorised in this behalf as prescribed under sub-section (2), the direction in writing issued in this regard by the person authorised by the political party from time to time to recommend the symbol of the political party concerned for contesting in election shall be deemed to be valid.]

**Explanation.**— For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was <sup>3</sup>[set up or given support] as a candidate for the election.

**4. Decision on question as to disqualification on ground of defection.**— (1) If any question arises as to whether a member of a local authority has become subject to disqualification under the provisions of this Act a member of that local authority or the political party concerned or a person authorised by it in this behalf may file a petition before the State Election Commission for decision.

(2) The State Election Commission shall, after making such enquiry as it deems necessary, decide whether such member has become subject to such disqualification or not and its decision thereon shall be final.

(3) Where the State Election Commission decides that a member has become subject to disqualification under sub-section (2), he shall cease to be a member from the date of such decision and shall be disqualified for contesting as a candidate in an election to any local authority for 6 years from that date.

**5. Powers of the State Election Commission.**— (1) Every petition under sub-section (1) of section 4 shall be disposed of by the State Election Commission in accordance with the procedure /as applicable while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908).

(2) The State Election Commission shall while trying petition under sub-section (1), have the Powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document or other materials that may be produced as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office;

(e) issuing commission for taking evidence from witnesses or documents.

(3) The State Election Commission shall be deemed to be a Civil Court and every proceeding before the Commission shall be deemed to be judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 (Central act 45 of 1860).

**6. Bar of jurisdiction of the Civil Courts.**— No Civil Court shall have jurisdiction in respect of a matter in so far as it relates to disqualification of a member of a local authority under this Act.

**7. Power of the Government to make rules.**— (1) The Government may, by notification in the Gazette and in consultation with the State Election Commission, make rules, either prospectively or retrospectively for carrying out all or any of the provisions of this Act,

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session, for a total period of 14 days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the sessions immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**8. Validation of action taken by the State Election Commission in respect of defection.**— Notwithstanding anything contained in any other law or in any judgement, decree or order of a court, any petition relating to defection of a member of any local authority filed before the State Election Commission before the 2nd day of October, 1998 or any action or decision taken by the Commission thereon or any order disqualifying a member shall be deemed, as the case may be, to have been filed or taken or issued under the provisions of this Act.

**9. Amendment to certain Acts.**— The Kerala Panchayat Raj Act, 1994 (13 of 1994) and the Kerala Municipality Act, 1994 (20 of 1994) shall have effect, subject to the modifications specified in the first schedule and second schedule respectively, from the 2nd day of October 1998.

**10. Repeal and saving.**— (1) The Kerala Local Authorities (Prohibition of Defection) Ordinance 1998 (14 of 1998) is hereby repealed.

(2) Notwithstanding such repeal, anything done or deemed to have been done or any action taken or deemed to have been taken under the said ordinance shall be deemed to have been done or taken under this Act.

## FIRST SCHEDULE

### AMENDMENT TO THE KERALA PANCHAYAT RAJ ACT, 1994.

#### (13 OF 1994)

1. In section 34, after Clause (k), in sub-section (1), the following clause shall be inserted, namely:—

“(kk) has been disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 and six years have not elapsed from the date of disqualification, or”.

2. In Section 35, after Clause (m), the following clause shall be inserted, namely—

“(n) is disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999”.

3. In sub-section (1) of Section 36, for the words and figures, “or Section 35”, the words, figures, letter and brackets “or Section 35, except Clause (n)” shall be substituted;

4. In Section 153, after sub-section (7), the following sub-section shall be inserted, namely:—

“(7A) Election shall be made by means of open ballot and the member who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper”.

5. In Section 157, after sub-section (9) the following sub-section shall be inserted, namely:—

“(9A) Election shall be by means of open ballot and the member who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper”.

## **SECOND SCHEDULE**

### **AMENDMENTS TO THE KERALA MUNICIPALITY ACT, 1994,**

**(20 OF 1994)**

(1) In Section 12, after sub-section (3), the following sub-section shall be inserted, namely:—

“(3A) Election shall be by means of open ballot and the Councillor who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper.”

(2) In sub-section (9) of Section 19 for the words “which shall be by means of secret ballot” the words, which shall be by means of open ballot and the Councillor who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper”, shall be substituted;

(3) In Section 90, after clause (k) in sub-section (1), the following clause shall be inserted, namely:—

“(kk) has been disqualified under the provisions of The Kerala Local Authorities (Prohibition of Defection) Act, 1999 and six years have not elapsed since the date of his disqualification; or”,

(4) In Section 91, after Clause (I), the following clause shall be inserted, namely:—

“(II) has been disqualified under the provisions of the Kerala Local Authorities (Prohibition of Defection) Act, 1999; or,”

(5) In sub-section (1) of Section 92, for the words and figures “or Section 91” the words, figures, letters and brackets, “or Section 91, except Clause (II),” shall be substituted.

**\*THE KERALA LOCAL AUTHORITIES  
(DISQUALIFICATION OF DEFECTED MEMBERS)  
RULES, 2000**

**S.R.O. No. 158/2000.**— In exercise of the powers conferred by sub-section (1) of Section 7 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (11 of 1999), the Government of Kerala, in consultation with the State Election Commission, hereby make the following rules in supersession of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 1998 issued under Notification No. G.O. (P) No. /98/LAD dt. 23<sup>rd</sup> December 1998 and published as S.R.O. No. 1112/98 in the Kerala Gazette Extraordinary No. 2093 dated 23<sup>rd</sup> - December 1998, namely:—

**RULES**

**1. Short title and commencement.**— (1) These rules may be called the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000.

(2) They shall be deemed to have come into force on the 2<sup>nd</sup> day of October, 1995.

**2. Definitions.**— In this Rules, unless the context otherwise requires,—

(a) “Act” means the Kerala Local Authorities (Prohibition of Defection) Act (11 of 1999).

(b) “Secretary” means the Secretary of a local authority;

(c) “Section” means a section of the Act;

(d) The words and expressions used and not defined in these rules, but defined in the Act shall have the meanings respectively assigned to them in the Act.

**3. To maintain register to record the party connections of members.**— (1) The Officer authorized for the purpose by the State Election Commission shall record in the Register in Form 1 appended to these rules, the details as to whether a member duly elected to a local authority is one who belongs to a political party or coalition or is having the support of any one of them or is an independent member not belonging to any political party or coalition.

(2) If a member elected to a local authority is,-

(a) a person who contested election as a candidate of a Political party or as a candidate having the support of political party shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as a member of that political party or as a member with the support of that political party, as the case may be;

(b) an independent who contested election as a candidate of a coalition or as a candidate with the support of the coalition, shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as a member of that coalition or as a member with the support of that coalition; as the case may be;

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\* Published in K.G. Ex. No. 369 dt. 3-3-2003 as Notn. No. 3354/N1/2003/LSGD dt. 24-2-2003 (w.e.f. 2-10-1995).

(c) an independent who contested election otherwise than as the candidate of a political party or a coalition or as the candidate with the support of the same shall file a declaration to that effect before the Officer authorized under sub-rule (1) and accordingly that member shall be treated as an independent member and;

a register under sub-rule (1) shall be maintained recording therein the respective facts.

(3) The declaration of the member under sub-rule (2) shall be in Form 2 appended to these rules and shall be filed on the same day he assumes Office as member after the swearing:

Provided that a person who has been a member of a Local authority on the date of publication of these rules in the Gazette shall, in accordance with the position as on the date on which he was elected a member, file, before the expiry of the date fixed by order by the State Election Commission, the declaration under sub-rule (2) and the details in respect of the member shall be recorded in the register accordingly.

**Explanation.**— Declaration shall be filed under these rules even if a member has filed declaration under rule 3 of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 1998 and the details in respect of the member have been recorded in the register maintained under the said rules.

(4) The register maintained under sub-rule (1) and the declarations that the members submit for making entries therein shall be kept in the safe custody of the Officer authorized under sub-rule (1) at his own responsibility.

**4. The manner in which a Political party or Coalition may give direction to its members.**— (1) If a political party or coalition gives any direction in respect of the casting of vote in an election or in a voting as has been mentioned in clause (a) or clause (b) of Section 3, it shall be in writing and such a direction shall be given,—

<sup>1</sup>[(i) ഒരു രാഷ്ട്രീയ കക്ഷിയിൽപ്പെട്ട അംഗത്തിന്റെയോ അതിലുൾപ്പെട്ടതായി കണക്കാക്കുന്ന അംഗത്തിന്റെയോ കാര്യത്തിൽ പ്രസ്തുത അംഗത്തിന് തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ആ രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം ശുപാർശ ചെയ്യുന്നതിന്, അതതു കാലങ്ങളിൽ, രാഷ്ട്രീയ കക്ഷി അധികാരപ്പെടുത്തിയിട്ടുള്ള ആൾ ആയിരിക്കേണ്ടതാണ്:

എന്നാൽ, മേൽപ്പറഞ്ഞ നിർദ്ദേശം ആ രാഷ്ട്രീയ കക്ഷിയുടെ ലെറ്റർ ഹെഡിൽ തീയതി വച്ച് ഒപ്പിട്ട് അതിന്റെ മുദ്രയോടുകൂടി ആയിരിക്കേണ്ടതാണ്.]

(ii) In the case of a member who belongs to a coalition or considered to be included in it; by the member whom the members of the said coalition and the members considered to be included in it in the local authority concerned elect for the purpose, on majority basis from among themselves.

<sup>2</sup>[(iii) xxx]

<sup>3</sup>[x x x]

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1. Clause (i) substituted by SRO No. 458/2014 dt.6-8-2014.

2. Clause (iii) omitted by SRO No. 458/2014 dt. 6-8-2014. Prior to the omission clause (iii) as inserted by SRO No. 913/2005 read as under

“(iii) if any dispute arises between the member elected on majority or the concerned political party as mentioned in clause (i), the above said direction given shall be considered as valid.”

3. Sub-rule (2) omitted by SRO No. 913/2005, w.e.f. 30-9-2005. The omitted sub-rule read as under

“(2) The political party and the coalition having representation in a local authority shall, immediately when the member who shall issue direction under sub-rule (1) is elected, inform the fact to the Secretary.

<sup>4</sup>[(2)] While issuing a direction under sub-rule (1) directly, the person who gives it shall obtain a receipt from the member and while sending it by registered post it shall be done along with acknowledgement due and while effecting it by affixing it shall be done in the presence of at least two witnesses. 4[Copy of the direction in writing shall also be given to the Secretary.]

<sup>5</sup>[4A. **Petition regarding disqualification.**— (1) ആക്ട് പ്രകാരം ഒരു തദ്ദേശസ്വയംഭരണ സ്ഥാപനത്തിലെ ഒരു അംഗത്തിന് അയോഗ്യത ഉണ്ടായോ എന്ന പ്രശ്നം ഉദിക്കുന്ന പക്ഷം, <sup>5A</sup>[പ്രസ്തുത അംഗം ഉൾപ്പെട്ടതോ ഉൾപ്പെട്ടതായി കണക്കാക്കുന്നതോ ആയ രാഷ്ട്രീയ കക്ഷിക്കോ, ആ രാഷ്ട്രീയകക്ഷി അധികാരപ്പെടുത്തിയ വ്യക്തിക്കോ അഥവാ പ്രസ്തുത രാഷ്ട്രീയ കക്ഷിയുടേതായ ചിഹ്നം തിരഞ്ഞെടുപ്പിൽ മത്സരിക്കുന്നതിനായി ശുപാർശ ചെയ്യുന്നതിന് അധികാരം നൽകപ്പെട്ടിരുന്ന ആളിനോ] ബന്ധപ്പെട്ട തദ്ദേശ സ്വയംഭരണ സ്ഥാപനത്തിലെ മറ്റേതെങ്കിലും അംഗത്തിനോ, അക്കാര്യം തീരുമാനിക്കുന്നതിനായി സംസ്ഥാന തിരഞ്ഞെടുപ്പ് കമ്മീഷൻ മുന്പാകെ ഒരു ഹർജി ബോധിപ്പിക്കാവുന്നതാണ്.

(2) The petition as per sub-rule (1) shall be filed within <sup>5B</sup>[30] days from the date of deemed disqualifications of the Member:

Provided that if the petitioner proves that there exist sufficient reason for not filing the petition within the time limit specified, the State Election Commission may accept the petition.]

**5. Decision of the Election Commission regarding disqualification.**— (1) Every petition mentioned under sub-section (1) of Section 4 shall, as far as may be disposed of <sup>6</sup>[within one twenty days] of its receipt.

(2) The register that is maintained under Rule 3, the declarations filed by the members for recording the details therein, the records in respect of voting or election conducted in the meetings of the local authority, the ballot papers on which the members marked their votes etc. shall, as the State Election Commission may demand, be submitted before the Commission by the Officer maintaining the same or the Secretary, as the case may be.

(3) For the purpose of disposing a petition under sub-rule (1), the State Election Commission may, if it deems necessary, examine the veracity of the declaration filed by the member concerned under sub-rule (2) of Rule 3 or may also examine as to whether the member belongs to a political party or to a coalition or is an independent member not included in a political party or a coalition, and the decision that the commission may take on the basis of such examination in the matter shall be final.

(4) Sub-rule (1) shall not apply in the case of a petition filed before the State Election Commission or which is pending before it prior to the date of publication of these rules in the Gazette and which alleges that a member of a local authority as become subject to disqualification for the reason of defection and the Commission may dispose of such a petition even in the absence of a copy of the direction under sub-rule (1) of Rule 4.

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4. Words added by SRO No. 913/2005, w.e.f. 30-9-2005 after renumbering the existing sub-rule (3) as sub-rule (2).  
5. Inserted by SRO No. 209/2001, w.e.f. 1-3-2001,  
5A. Substituted by SRO No. 458/2014, published in K.G No. 1997 dt. 6-8-2014. The relevant English translation is not yet received.  
5B. Substituted for "15" by SRO No. 458/2014, published in K.G No. 1997 dt. 6-8-2014.  
6. Substituted for the words "within sixty days" by SRO No. 456/2010, published in K.G No. 19 dt. 11-5-2010.



**Appendix**

**FORM 1**

[See Rule 3 (1)]

**REGISTER SHOWING THE PARTY CONNECTION OF MEMBERS OF  
PANCHAYAT/MUNICIPAL COUNCIL/CORPORATION**

Serial Number	Name of the Member	Ward	Date on which elected	Election Symbol	Date of Declaration	Whether member of a political party/member of a political party in a coalition or member with the support of a coalition/independent member in the coalition/independent member not belonging to any political party or coalition	If a member of a political party or coalition or member with the support thereof, name of the political party/coalition.	If a member of a coalition, the total number of the member therein.	Name and signature of the authorized Officer and the date	If disqualified for defection, number and date of the order thereof
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)

**Appendix**

**FORM 2**

**DECLARATION**

[See sub-rule (2) of Rule 3]

I..... hereby declare that I have contested election to..... Panchayat / Municipal Council / Municipal Corporation Council from .....ward in the election held on ..... in ..... symbol as,

(a) a candidate of ..... party/

(b)..... an independent candidate with the support of ..... party/

(c) an independent candidate with the support of the coalition ...../

(d) an independent candidate without the support of any political party or coalition, and was elected as Panchayat Member/Municipal/Corporation Councilor.

2. The coalition called ..... to which I belong .....include parties/  
no political parties.

3. Following are the other members of the coalition to which I belong:

(i) Shri .....(ward.....)

(ii) Shri.....(ward.....)

(iii) Shri.....(ward.....)

Place:.....

Date: ..... Name,Signature and Address

Note:- Add whichever required and strike off whichever not applicable.