

Thirteenth Kerala Legislative Assembly

Bill No. 105

**THE KERALA LOCAL AUTHORITIES (PROHIBITION OF
DEFECTION) AMENDMENT BILL, 2012**

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**THE KERALA LOCAL AUTHORITIES (PROHIBITION OF DEFECTION)
AMENDMENT BILL, 2012**

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further to amend the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Local Authorities (Prohibition of Defection) Act, 1999 for the purposes hereinafter appearing ;

BE it enacted in the Sixty-third 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) Amendment Act, 2012.

(2) It shall be deemed to have come into force on the 17th day of January, 2012.

2. *Amendment of section 2.*—In the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (11 of 1999) (hereinafter referred to as the principal Act), in section 2, after clause (iv), the following clause shall be inserted, namely:—

“(iva) “direction in writing” means a direction in writing, signed with date, issued to a member belonging to a political party or who has the support of the said political party, by the District President or the District Secretary of the said political party for exercising the vote favourably or unfavourably or to abstain from voting ;”.

3. *Amendment of section 3.*—In section 3 of the principal Act,—

(a) the existing section shall be numbered as sub-section (1) of that section and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

“(2) A copy of the direction in writing issued for the purpose of clauses (a) and (b) of sub-section (1) shall be given to the Secretary of the local authority concerned and the member authorised to issue direction in that meeting, as prescribed, shall read the contents of the said direction, regarding the voting as per the said clauses for the information of the members and the direction so read shall be deemed to have been issued to the members in person.

(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 District President or the District Secretary of the political party concerned shall be treated as valid.”;

(b) in the existing explanation, for the words “set up”, the words “set up or has given support” shall be substituted.

4. *Repeal and saving.*—(1) The Kerala Local Authorities (Prohibition of Defection) Amendment Ordinance, 2012 (31 of 2012) is hereby repealed.

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

STATEMENT OF OBJECTS AND REASONS

The Government have decided to incorporate specific provisions in the Kerala Local Authorities (Prohibition of Defection) Act, 1999 regarding the issuance of directions in writing signed with date, to a member belonging to a political party or who has the support of a political party, to exercise his vote favourably or unfavourably or to abstain from voting. In order to incorporate specific provisions in this respect, the Government intend to amend sections 2 and 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

2. As the Legislative Assembly was not in session and the above proposal had to be given effect to immediately, the Kerala Local Authorities (Prohibition of Defection) Amendment Ordinance, 2012 was promulgated by the Governor of Kerala on the 17th day of January, 2012, and the same was published as Ordinance Number 5 of 2012 in the Kerala Gazette Extraordinary number 115, dated 17th January, 2012.

3. A Bill to replace the said Ordinance by an Act of the State Legislature could not be introduced in, and passed by, the Legislative Assembly of the State of Kerala during its session which commenced on the 1st day of March and ended on the 23rd day of March, 2012.

4. In order to keep alive the provisions of the said Ordinance, the Kerala Local Authorities (Prohibition of Defection) Amendment Ordinance, 2012 was promulgated by the Governor of Kerala on the 11th day of April, 2012 and the same was published as Ordinance Number 31 of 2012 in the Kerala Gazette Extraordinary Number 733, dated 11th April, 2012.

5. The Bill seeks to replace Ordinance Number 31 of 2012 by an Act of the State Legislature.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (2) of section 3 proposed to be inserted by sub-clause (a) of clause 3 of the Bill provides to empower the Government to prescribe the manner in which the member who is to give directions in the meeting regarding the casting of vote as per clauses (a) and (b) of sub-section (1) of section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999.

2. The matter in respect of which rules may be made is matter of procedure and are of routine or administrative in nature. Further, the rules made are subject to the scrutiny of Legislative Assembly. The delegation of legislative power is, thus, of a normal character.

M. K. MUNEER.

EXTRACT OF THE RELEVANT PORTIONS FROM THE KERALA LOCAL
AUTHORITIES (PROHIBITION OF DEFECTION) ACT, 1999

(11 OF 1999)

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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 anyone 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) ;

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

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3. *Disqualification on ground of defection.*—(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 belonging 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 a Standing Committee or the Chairman of the 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 ;

(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.

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 set up as a candidate for the election.

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